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In The
Supreme Court of the United States

OCTOBER TERM, 1975

No. .....

WILLIAM B. DAWSON, III,
Petitioner,

-vs-

THE FLORIDA BAR,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

DESIGNATION OF PARTIES

Petitioner, WILLIAM B. DAWSON, III, will be called DAWSON.

Respondent, THE FLORIDA BAR, will be called THE BAR.

OPINIONS BELOW

The Florida Supreme Court Opinion – announcing Dawson's disbarment – has not been reported. A copy is included in the Appendix.

The Referee's report recommending disbarment – was not published officially. A copy however, is included in the Appendix.

The Opinion of The Florida District Court of Appeal, First District in *State v. Dawson* – a companion case – approving suppression of certain evidence seized under an invalid search warrant – is reported in 276 So.2d 65 (1973). A copy is included in the Appendix.

DENIAL OF RE-HEARING

Dawson's Petition for Re-hearing was filed August 7, 1975 – and denied by Order dated *Sept. 11, 1975*. Copies of the Petition and the Order of Denial are included in the Appendix.

JURISDICTIONAL STATUTE

Jurisdiction is conferred by 28 U.S.C. 1257 (3)

QUESTIONS PRESENTED

QUESTION ONE: WHETHER PLAIN ERROR INFECTS A DISBARMENT PROCEEDING – RENDERING IT INHERENTLY SUSPECT – FOR PROSECUTORIAL MISCONDUCT PRECLUDING A FAIR TRIAL – WHERE THE ACCUSED ATTORNEY IS KNOWN, PROMINENTLY AS A PLAINTIFFS' ADVOCATE IN PERSONAL INJURIES CASES – AND THE RECORD SHOWS THE PROCEEDING WAS

INSTIGATED, AND THE PROSECUTION MANAGED, BY SPECIALLY APPOINTED BAR COUNSEL KNOWN, EQUALLY PROMINENTLY, FOR REPRESENTATION OF INSURANCE COMPANIES IN PERSONAL INJURIES CASES – AND WHERE THE RECORD FURTHER SHOWS THAT THE CENTRAL CHARGE AGAINST THE ACCUSED ATTORNEY – viz MAKING "ADVANCEMENTS" TO CLIENTS – WAS INVESTIGATED AND FRAMED AS WELL AS PROSECUTED, BY SUCH BAR COUNSEL – AND WHERE THE RECORD, FURTHER, SHOWS THAT TWO FORMER CLIENTS OF THE ACCUSED ATTORNEY TESTIFIED IN THE PROCEEDING, AS TO "ADVANCEMENTS" MADE TO THEM – AND WHERE THE RECORD, FURTHER, SHOWS THE APPEARANCE OF SUCH FORMER CLIENTS OF THE ACCUSED ATTORNEY AS WITNESSES AGAINST HIM HAD BEEN ARRANGED BY BAR COUNSEL WHO, BEFOREHAND, HAD SUMMONED THEM, BY SUBPOENA TO HIS PRIVATE LAW OFFICE FOR INTERROGATION AS TO WHAT THEY KNEW AND WOULD TESTIFY TO – AND WHERE THE RECORD FURTHER SHOWS THAT

IN THE PERSONAL INJURIES ACTIONS' BROUGHT BY THE ACCUSED ATTORNEY, ON BEHALF OF SUCH FORMER CLIENTS, BAR COUNSEL HAD BEEN ADVERSARY ATTORNEY OF RECORD FOR THE DEFENDANT INSURANCE COMPANIES – AND WHERE THE RECORD, FURTHER, SHOWS THAT NOTWITHSTANDING HIS PECUNIARY INTEREST IN THE PROCEEDING'S OUTCOME, AS DEMONSTRATED BY ALL THE FOREGOING RECITALS, BAR COUNSEL, ON OBJECTION OF THE ACCUSED ATTORNEY, DECLINED TO CONCEDE IMPROPRIETY AND DISQUALIFY HIMSELF FROM PARTICIPATION IN THE ACCUSED ATTORNEY'S TRIAL – AND WHERE THE RECORD FURTHER SHOWS, THE PRESIDING REFEREE REFUSED TO COMPEL DISQUALIFICATION.

QUESTION TWO: WHETHER AN ACCUSED ATTORNEY – IN A DISBARMENT PROCEEDING – IS DENIED DUE PROCESS – (1) FOR CONVICTION ON A CHARGE NEVER MADE and (2) FOR CONVICTION UNDER AN EX POST FACTO LAW – WHERE THE COMPLAINT CHARGES HIM WITH MAKING "ADVANCEMENTS" TO CLIENTS IN VIOLATION OF CERTAIN CANONS – BUT WHERE THE

REFEREE CONVICTS HIM OF VIOLATING AN ENTIRELY DIFFERENT CANON – AND WHERE THE STATE SUPREME COURT, REVIEWING THE CONVICTION, UPHOLDS IT, ON THE THEORY IT VIOLATES NEITHER THE CANONS CHARGED IN THE COMPLAINT: NOR THE CANON INVOKED BY THE REFEREE, BUT AN "ETHICAL CONSIDERATION" MERELY ASPIRATIONAL IN NATURE – AND WHERE SUCH ETHICAL CONSIDERATION WAS NOT IN EXISTENCE AS OF THE DATES ON WHICH THE ALLEGED "ADVANCEMENTS" WERE MADE BY THE ACCUSED ATTORNEY.

QUESTION THREE: WHETHER AN ACCUSED ATTORNEY – IN A DISBARMENT PROCEEDING – IS DENIED DUE PROCESS – FOR WANT OF FAIR NOTICE THAT HIS ACTS MIGHT BE DEEMED PROFESSIONAL MISCONDUCT WARRANTING DISBARMENT – WITHIN THE MEANING OF MR. JUSTICE WHITE'S CONCURRING OPINION IN *RUFFALO*[1] – WHERE THE ACCUSED ATTORNEY IS CHARGED AND CONVICTED OF

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1 *In the matter of John Ruffalo* 390 U.S. 815, 19 L.Ed.2d 66, 88 S.Ct. 30(1967)

MAKING "ADVANCEMENTS" TO CLIENTS – NOTWITHSTANDING THAT AT THE TIME HE MADE THEM, THEY WERE NOT CONDEMNED AS UNAUTHORIZED, UNDER THE SETTLED DECISIONAL LAW OF THE SUBJECT JURISDICTION, NOR MOST AMERICAN JURISDICTIONS, GENERALLY.

QUESTION FOUR: WHETHER AN ACCUSED ATTORNEY – IN A DISBARMENT PROCEEDING – CHARGED WITH "CUSTOMARILY AND ROUTINELY" MAKING "MONETARY ADVANCEMENTS – TO CLIENTS FOR PURPOSES OTHER THAN EXPENSES OF LITIGATION" DURING A THREE AND A HALF YEAR PERIOD – TERMINATING AS OF THE DATE THE DISBARMENT PROCEEDING WAS COMMENCED – IS VICTIMIZED BY DENIAL OF DUE PROCESS – FOR LACK OF EVIDENCE IN THE RECORD TO SUPPORT A RATIONAL CONCLUSION OF GUILT – WITHIN THE MEANING OF *SCHWARE*[2] AND *THOMPSON*[3] WHERE THE EVI-

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2 *Schware* v. *Board of Bar Examiners* 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796(1959)

3 *Thompson* v. *Louisville* 362 U.S. 199, 808 S.Ct. 624, 4 L.Ed. 2d 654(1963)

DENCE CONSISTS, ENTIRELY, OF THE TESTIMONY OF TWO FORMER CLIENTS AND A FORMER EMPLOYEE OF THE ACCUSED ATTORNEY – AND WHERE THE TESTIMONY OF ONE OF THE FORMER CLIENTS WAS THAT HE RECEIVED ONE "ADVANCEMENT" OF ONE HUNDRED DOLLARS ON A DATE TWO AND A HALF YEARS PRIOR TO COMMENCEMENT OF THE DISBARMENT PROCEEDING – AND WHERE THE OTHER FORMER CLIENT'S TESTIMONY WAS THAT SHE HAD RECEIVED ADVANCEMENTS OF FIFTY DOLLARS PER WEEK – FOR "ABOUT TWO MONTHS" – WHILE SHE WAS DISABLED TO WORK – AND SUCH ADVANCEMENTS WERE MADE TWO AND A HALF YEARS PRIOR TO COMMENCEMENT OF THE DISBARMENT PROCEEDINGS – AND WHERE THE FORMER EMPLOYEE'S TESTIMONY WAS THAT SHE OBSERVED WEEKLY ADVANCEMENTS MADE TO CLIENTS WHOSE NUMBER SHE COULD NOT "BEGIN TO GIVE . . . AN IDEA" OF – BUT MIGHT HAVE BEEN "A HUNDRED, A COUPLE OF HUNDRED" – ALTHOUGH SHE DID NOT RECALL THE NAME OF A SPECIFIC CLIENT TO WHOM – NOR A SPECIFIC DATE ON

WHICH – AN ADVANCEMENT WAS MADE – NOR THE PURPOSE FOR WHICH IT WAS MADE – AND WHERE BOTH FORMER CLIENTS TESTIFIED THAT THE ADVANCEMENTS HAD BEEN MADE TO THEM SUBESEQUENT TO THEIR EMPLOYMENT OF THE ACCUSED ATTORNEY – AND THAT SUCH ADVANCEMENTS HAD NO CONNECTION, AT ALL, WITH THEIR DECISIONS TO EMPLOY HIM – NOR TO CONTINUE HIS EMPLOYMENT.

QUESTION FIVE: WHETHER AN ACCUSED ATTORNEY – IN A DISCIPLINARY PROCEEDING – MAY BE CONVICTED AND DISBARRED – CONSISTENT WITH *SCHWARE* AND *THOMPSON* – ON A CHARGE OF "RECEIVING STOLEN PROPERTY". – NOTWITHSTANDING A CONCESSION BY THE STATE COURT, OF FINAL REVIEW, THAT THE EVIDENCE WAS SO "CIRCUMSTANTIAL AND UNCONVINCING THAT IT WOULD NOT WARRANT CONVICTION AND DISBARMENT" – EXCEPT CONSIDERED, CUMULATIVELY, WITH ANOTHER "PROVEN CHARGE".

QUESTION SIX: WHETHER THE SIXTH AMENDMENT GUARANTEE – THAT *"IN ALL CRIMINAL PROSECUTIONS,* THE ACCUSED SHALL ENJOY THE

RIGHT TO A . . . PUBLIC TRIAL, BY AN IMPARTIAL JURY" . . . TOLERATES A SECRET TRIAL WITHOUT A JURY – IN A *QUASI-CRIMINAL PROSECUTION*, THAT IS: IN A DISBARMENT PROCEEDING–MOST PARTICULARLY, WHERE AS HERE, THE ACCUSED ATTORNEY – IN SUCH A PROCEEDING–IS CHARGED AND CONVICTED OF THE COMMISSION OF A CRIME – i.e., "RECEIVING STOLEN PROPERTY"–NOTWITHSTANDING *THAT A COURT OF COMPETENT JURISDICTION*, PREVIOUSLY, HAD ENTERED A NOLLE PROSEQUI DISMISSAL – IN THE ATTORNEY'S FAVOR – AS TO THE SAME, ALLEGED CRIMINAL TRANSACTION – FOR WANT OF EVIDENCE.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND CASES INVOLVED

The Constitutional, Statutory and like provisions implicated in this Controversy are too numerous and lengthy to set out verbatim, here, but all are included in the Appendix.

Meanwhile, their citations are:

The Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

Rule 11:02 of Article XI of the Integration Rule of The Florida Bar.

The oath of Admission prescribed for Attorneys by the Integration Rule of the Florida Bar.

Canon 10 . . . of the Canons of Professional Ethics, as adopted by The Florida Supreme Court, December 6, 1955, and Amended, November 17, 1958, March 25, 1964 and May 11, 1966.

Rules 27 and 32 of the Additional Rules Governing the Conduct of Attorneys in Florida.

Canons 1 and 5 of the Code of Professional Responsibility, adopted by the Florida Supreme Court October 1, 1970.

STATEMENT OF THE CASE

Dawson seeks review of a Florida Supreme Court Disbarment Judgment – purporting to approve a *Referee's* findings of guilt on two charges – which stated, telescopically, were: 1. Making "Advancements" to Clients and 2. Receiving stolen property.

To be precise, however, it cannot be said that conviction on the second charge was approved, except ambiguously and conditionally, inasmuch as the covering opinion contains a caveat – tantamount to a partial disclaimer – saying, *Because this finding is based . . . on circumstantial evidence . . . We would not be inclined to disbar . . . (Dawson) if this were the only offense . . . charged.*"

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ORIGINAL COMPLAINT

The Bar's Complaint originally was in six Counts. (A-1) each specifying a separate charge – but The Bar abandoned and consented to dismissal of Counts I, V and VI, without offer of proof – and the Referee directed a verdict on Count II – when the sole prosecution witness' testimony, in effect, denounced its essential allegations as invention – and exonerated Dawson.

The surviving Counts III, and IV went to trial and final verdict.

FACTS RELEVANT TO COUNT III. CHARGING "ADVANCEMENTS" TO CLIENTS.

In material part, Count III charged Dawson as follows:

> "1. From on or about January 1, 1969, up to and including the present time, the accused attorney has customarily and routinely made monetary advances to his clients for purposes other than expenses of litigation."

The evidence presented, by the Bar, on Count III, consisted of the testimony of three witnesses – two former clients – and a former employee – of Dawson's.

The testimony of each of them summarized, fairly and fully, was as follows:

Lucious Pryor's Testimony on Direct

Pryor testified, on direct examination:

"That on April 23, 1970 he was injured in an automobile

accident. (R-35)

That his 1970 Nova automobile was "lost" in the accident (R-35) and his injuries included facial cuts and the near loss of his left eye (R-36) – requiring him to lose forty-one (41) days from work. (R-35)

That about a week later he retained Dawson to represent him (R-36-37) and sometime thereafter Dawson gave him One Hundred Dollars ($100.00). (R-37-38)

That Dawson "asked me did I need any money" (R-38) and "I told him yes" (R-38) whereupon he received "a hundred dollar check . . ." (R-39)

That he had not "asked . . . Dawson for money" (R-39 – but needed the hundred dollars (R-38) – and used it to buy "two automobile tires" (R-41) although he did not tell Dawson what he used it for. (R-41-42)

That "other than . . . the . . . hundred dollars" Dawson had furnished him no money (R-39) except "a twenty-four dollar check . . . to give to the doctor"; (R-39)

That his case was lost before a jury (R-40)

That he "did not ever give . . . Dawson the hundred dollars back" (R-40) and Dawson had not asked him for it (R-40) nor sued to recover it; (R-40)

Pryor's Testimony on Cross

On cross-examination, Pryor testified:

. . . *"At the time . . . (he) retained . . . Dawson . . . no commitment or promises 'were made' to pay . . . (him) any money to get . . . (Dawson) to represent . . . (him)"*

BLURRED

(R-43) – that the employment of Dawson *was his "voluntary choice" (R-43) – that there was "no inducement . . . to pay . . . (him) money to let . . . (Dawson) handle his case." (R-43-44)*

That the transaction in which Dawson had furnished him the hundred dollar check had taken place "over four and a half years" previously – and he could not remember, specifically, what he had said or what Dawson had said, at the time, but he was certain "the . . . hundred dollars had nothing to do with . . . (Dawson's) taking his case or retaining it". (R-44-46)

That he did remember that "when . . . (his) case was tried in court . . . (Bar Counsel) – sitting beside him, now, as Dawson's prosecutor, had "represented the insurance company". (R-49)

That, moreover, the same Bar Counsel had used a subpoena to call him in – in 1974 – to ask him about "the fact that . . ." Dawson had given him one hundred dollars. (R-48-50)

That Bar Counsel had "interviewed" him "a second time" about the same matter – and that Bar Counsel was the only person who had "interviewed" him. (R-49-50)

That he had . . . paid out in medical expenses . . . far in excess of the one hundred dollars . . . (Dawson) had advanced . . . (him)". (R-56-57)

Pryor's Testimony on Re-Direct

Pryor testified on re-direct examination:

That "the hundred dollars . . . (Dawson) gave him . . . (did not) have anything to do with paying for any of . . . (his) eye problems or anything". (R-58)

OPY

That as to "the conversations . . . (he had) had with . . . (Bar Counsel)[4] about this hundred dollar advancement . . . (he did not) really recall exactly when the date of that was". (R-59)

That he did not recall "how long after . . . (his personal injury) case was lost before . . . (Bar Counsel) sent . . . (him) a subpoena and . . . (he went) to . . . (Bar Counsel's) Office . . . to talk to . . . (Bar Counsel) about "the advancements"; (R-59) – but "It was over three years". (R-59-64)

Pryor's Testimony on Re-Cross

On re-cross examination, Pryor testified:

That "the first time he had talked to . . . Bar Counsel" about the advancement from Dawson, "was after his case was lost" (R-60) "about three years after it was tried". (R-60)

That he had "paid out in expenses for doctors and all (far . . . in excess) of the . . . hundred dollars . . . Dawson had advanced him" (R-62) – that Dawson had paid twenty-four dollars on his doctor's bill but he had paid all the rest amounting to "between five and six hundred dollars all together". (R-62-65)

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4 To verify that Bar Counsel was the same lawyer who had represented the insurance company, in his personal injuries case, and, thereafter, interrogated him about the $100.00 "advancement" – Pryor turned to the Bar Counsel and asked "Was you the same Man?" – to which Bar Counsel responded, tersely, "yes." (R-49)

Teresa Jean Whatley's Testimony

On direct examination, Mrs. Whatley testified:

That she had been in an automobile accident on Christmas Eve 1969 (R-66) while a passenger in a taxi cab (R-66-67) and had sustained back and neck injuries (R-66-67) – and a week later retained Dawson to represent her. (R-67-68)

That about "a month after . . . (she) started discussing the case with him" – he gave her "a salary replacement check until . . . (she) could go back to work" (R-69) – that she thought the amount was approximately sixty or sixty-five dollars (R-69) that Dawson continued making these payments to . . . (her) "on a weekly basis" (R-70) – that she would "pick it up every Monday" (R-70) – that such payments were received "for about two months". (R-70)

That, in the end, her lawsuit was lost at trial. (R-77)

That she had never "repaid that money" to Dawson – that he had never asked for repayment – and had never sued her for it. (R-79)

That she had used the money for "the normal things . . . (she) did when (she) was working and got . . . (her) check". (R-80)

That she "lived off, that money" (R-80) buying "food and groceries" and paying the "phone bill". (R-80)

That " during this period of time" . . . (her father's job went on strike and . . . (she) tried to help out . . . with . . . (her) mother too" (R-80) – that she would buy some groceries for them. (R-80

That Bar Counsel (who had represented the insurance company in the lawsuit she had lost) (see R-10-20) called her

later to appear before him "to testify" about "advancements"; (R-80-81)

That she called Dawson – and told him she "had got a subpoena and . . . read . . . him over the phone what the subpoena said" (R-81)

That she asked Dawson "what it was all about" (R-81) and "He said it was concerning the money . . . he had loaned her . . . during the time . . . (she) was his client" (R-81) and she "told him he didn't loan . . . (her) no money because it was a salary replacement, and we exchanged words about it"; (R-81)

That Dawson, "at the time he was giving her this money on a regular weekly basis," had told her that "after the case come up and when we win the suit that that money would be reimbursed out of the proceeds of the suit"; (R-82)

Mrs. Whatley's Testimony on Cross

On Cross examination, Mrs. Whatley testified:

That the "question about the salary replacement "came up about a month after . . . (Dawson) took . . . (her) case" (R-85) that . . . "the advancing of . . . money . . . had nothing to do with . . . Dawson taking . . . (her) case" (R-85) that she "retained him to represent . . . (her) without any discussion of money or anything of that nature"; (R-85) and that "it had nothing to do with him continuing to represent . . . (her) in the case"; (R-85-86)

That her injuries had disabled her to work for "about eight or ten weeks" (R-86) – that she "had to have somebody help . . . (her) with . . . (her) children for a while" (R-86) – and she had told Dawson about it; (R-86)

That when she . . . "would go to the Doctor's office or down to . . . Dawson's office . . . (she took) a cab back and forth" (R-88) and she told Dawson "that that was expensive for . . . (her)." (R-88)

That she had to have " . . . medication and prescriptions in conjunction with the presentation of . . . (her) case and the treatment of . . . (her) injuries" (R-88) and she told Dawson she had "to pay for those things" (R-88)

That she did not remember specifically, that she told Dawson "that she needed money to help with these expenses" (R-88-89) but she "could have" told him (R-89) and, in all events, "Dawson did help . . . (her) pay them"; (R-88)

That she had testified she had received "sixty or sixty-five dollars a week from Dawson but (she) did not remember, clearly, what the amount was – and The Bar Association . . . information," furnished Dawson's attorneys, she assumed, was accurate, viz she had received fifty ($50.00) Dollars a week from Dawson, for eight weeks. (R-90-91)

That the payments from Dawson were stopped after eight weeks – but she could not recall whether they were stopped because Dawson told her she was able to return to work. (R-93-95)

Mrs. Whatley's Testimony on Re-Direct

On re-direct examination, Mrs. Whatley testified:

That she was not sure who designated the payments made to her as "salary replacement" (R-95-96) nor did she remember "how it came up or who suggested or mentioned or how the idea or the fact of regular weekly monetary advance-

ments came up in the first place" (R-96) or "who mentioned it first". (R-96)

Joan Clark's Testimony

After Ms. Clark was sworn – but before she had testified to more than the rituals as to name and address – and the like – an extended colloquy – consuming twenty-nine pages of record[5] took place – among Dawson, Bar Counsel and the Referee – swirling around Dawson's objection to her testimony, the essence of which was – that the original charge, as alleged in the Bar's Complaint, was that Dawson had "customarily and routinely" made unauthorized "advancements" to clients – over a period of almost four years – i.e., from January 1969 to November 13, 1972 when the Complaint was filed – that the charge, as made, had been too vague and protean to put him on notice adequate to enable him to prepare his defense – that he had sought to dismiss it – failing in which, he had sought to compel the Bar to flesh it out with particulars by a Motion for More Definite Statement and Discovery – that in response to a second set of Interrogatories, asking the dates, times, places and amounts of "advancements" made, and the identities of the clients to whom they were made – The Bar itemized "advancements" made to Pryor, Mrs. Whatley and Joseph Herman . . . that The Bar, subsequently, renounced its response as to Herman, leaving only, the "advancements" to Pryor and Mrs. Whatley to be reckoned with – that he had prepared his defense, accordingly, and that the Bar should be bound, accordingly – that he understood Ms. Clark's testimony would not deal with the Pryor-Whatley epi-

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5 Pages 153 to 182.

sodes but, would be random and discursive – that he would be taken by surprise and denied due process – within the reach of *Ruffalo* – if she were permitted to testify – that, indeed, *Ruffalo* was in point, exactly, holding that where an accused lawyer is confronted with amended charges, after disbarment proceedings begin, "They became a trap" – repugnant to "fair notice" and "procedural due process" (R-153-182)

Bar Counsel and the Referee were unimpressed with *Ruffalo* – Bar Counsel contending, astoundingly, that *"We are not bound to put on testimony about specific individuals, specific amounts insofar as this Count three is concerned because of the way it's drawn"* (R-159) and the Referee opining, equally astoundingly, that "in keeping with the spirit of the Integration rule . . . the Florida Bar . . . (should) not be prevented from introducing . . . evidence of . . . misconduct . . . up to and including the day of the hearing . . ." – whether alleged in the complaint or not. (R-161)

Dawson's objection was overruled.

Ms. Clark's Testimony on Direct

Whereupon, on direct examination, Ms. Clark testified:

That she had been employed by Dawson, as a legal secretary, from August 1969 to March 1971 (R-152) and had "knowledge" about "Dawson giving monetary advancements to . . . clients". (R-152)

That "during the time she worked for . . . Dawson," she "daily" saw him "instruct . . . secretaries . . . to make monetary advancements to clients". (183-185)

That "generally" she stayed "in the back" of Dawson's office (R-189) where she was "in a position to know or see advancements when they were given" (R-189) but, only, "occasionally". (R-189)

That "normally" advancements were made on "Friday" (R-189) – that she did not "know if – (she) could begin to even give an idea," as to "how many clients would come in on Fridays to receive monetary advancements" (R-189) – but she "could . . . just say hundreds" (R-189) "over a hundred, a couple hundred". (R-190)

That "there was a system . . . in the office, for repayment of these monetary advances" (R-193) that the "system" was that "on a closing statement when a case was closed . . . advances would be pulled and . . . deducted from . . . the settlement" (R-194) and "the cases . . . (she) worked with . . . that were lost would be written on the outside of the files, and the advancements would be . . . inserted in the file" (R-195) and as far as she knew the "advances . . . in those cases" were not repaid. (R-195)

That she *"could not remember any dates or places" as to Advancements "because there's been too large . . . a lapse of time" (R-196) that as to "dates, places . . . (or) amounts . . . (she could not) be specific on any of that". (R-196)*

That "maybe five or maybe a little bit more than that" (R-198) she had overheard Dawson "tell a client that this will be money for you while you're off work or while you're going to a doctor". This testimony was based on "I can't remember his exact words" and "that is just an assumption and conclusion from a conversation" that she heard from "somebody" she doesn't even "know". (R-229-230)

That at times she heard both "Dawson" and "Becky"

(Rebecca Salter, Dawson's Secretary) refuse to make advances to clients. (R-192) In her testimony (R-189) "Q: How many clients would come in on Fridays to receive monetary advancements? A: I don't know if I could begin to even give you an idea . . ." It is impossible to tell from her testimony whether any clients seeking money, *actually got it.*

Aside from the ambiguous testimony in the preceding paragraph, there is no evidence in the entire record of her testimony, that Dawson violated Section EC5-8, which states: "Although the assistance is not encouraged, there are instances when *it is not improper* to make loans to a client."

On Cross Examination, Ms. Clark Testified:

That when she "was told to write a check for an advance . . . that's all . . . (she) was told" (R-219) that she did not "know what the check was for" (R-219) that "it could have been . . . for any purpose" (R-219) that she did not know "whether it was for medical bills, to buy a brace, to pay a doctor, to pay for transportation . . . or anything else". (R-219-220)

That neither did she know . . . whether a client "repaid advances" (R-220) that at the "time of settlement of . . . (a) case . . . (she) would see advances repaid" (R-220) – but she had no "knowledge" about whether advances made in lost cases were repaid. (R-221)

Ms. Clark's Testimony, on Re-Direct

On the re-direct examination, Ms. Clark testified:

That she could "remember one specific occasion" when she heard Dawson discuss the purpose of an advancement to a

client (R-225-228) that she had "no idea when it occurred" (R-228) but could "remember . . . Dawson . . . (had) a conversation with . . . (a) client, and the client . . . indicated . . . (he could not) take off work . . . and go see a doctor because . . . (he wouldn't) have any money coming in" (R-228-229) – and Dawson "told the client that . . . (he would) give . . . (the client) monetary advancements while . . . off work"; (R-229)

That she could remember "that type of conversation" "one specific time" only (R-229) and she could not "recall when that one occurred . . . (or) the name of the client". (R-229)

Ms. Clark's Testimony on Re-Cross

On re-cross examination, Ms. Clark testified:

That in testifying she had heard Dawson tell a client he would make advancements to him while he was "off work", she had not meant to suggest those were Dawson's exact words (R-229-230) but it was "just . . . (her) assumption and conclusion from a conversation . . . (she) heard from somebody, that . . . (she didn't) even know who was present or the date . . . it occurred or anything else". (R-230)

That *"all . . . (she was) giving . . . (was) a fragmented part of a conversation with an unknown individual on a date uncertain and the words . . . (she) used . . . (were her) conclusions based upon overhearing part of a conversation."* (R-232)

FACTS RELEVANT TO COUNT IV CHARGING DAWSON WITH RECEIVING STOLEN PROPERTY

On or about March 31, 1972, Dawson's home and office were raided, as it were, by police officers, acting under color

of a search warrant, and three electric typewriters were seized, identified, by their serial numbers, subsequently, as having been stolen from the local branch of the Virginia Paper Company. (R-116)

Dawson was charged, criminally, with receiving stolen property, under Florida Statute, Section 811.16, but, the trial Court condemned the Search Warrant, and suppressed use of the seized typewriters – a ruling upheld by Florida's District Court of Appeal, First District. *State* v. *Dawson*, 276 So.2d 65 (1973).

A nolle proseque dismissal was entered for lack of evidence. But the Bar was not deterred – and Count VI of the Complaint filed against Dawson charged, in material part:

> 1. That on or about March 31, 1972, the accused attorney, William B. Dawson, III, did unlawfully and feloniously receive and aid in the concealment thereof, certain stolen property, to-wit: two IBM Electric typewriters and one Remington Electric typewriter, "both" the property of Virginia Paper Company, a corporation; and one SCM Marchant Adding Machine, the property of Mercedes Benz, Inc., a corporation. The accused attorney, WILLIAM B. DAWSON, III, knew that said property was stolen.

And, at trial, before the Referee, two witnesses were called to prove the charge – the thief, Howard McGee, and the Virginia Paper Company Branch Manager, David Maddox.

The testimony of each of them, is summarized, fully and fairly as follows:

McGee's Testimony on Direct

On direct examination, McGee testified:

That in February or March 1972 he "took" a typewriter, by theft, and sold it to Dawson; (R-105-107)

That he did not "recall the circumstances" surrounding the theft (R-106) nor even "what kind of typewriter it was"; (R-106)

That however, he took it to Dawson's office (R-106) where after examination to determine its workability – and a discussion of "money", Dawson bought it. (R-106-107)

That he was "not sure" about the amount paid by Dawson, but believed "it was seventy-five dollars". (R-106-107)

That he asked whether Dawson needed more typewriters – and was told yes. (R-107)

That "maybe two or three days later, a week" he stole another typewriter, and sold it to Dawson (R-107-108) although he could not recall, again, where he had stolen it. (R-107-108)

That, in a third episode, he stole three typewriters, from the Virginia Paper Company. (R-116)

That he, thereupon, "got . . . (the) address out of the phone book" (R-112) and delivered them to Dawson's house. (R-112-113)[6]

That he did not see Dawson, at his home, and did not know whether he was there. (R-116)

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6 Dawson's objection – that the complaint charged him with receiving three typewriters, specifically identified, and the Bar was seeking to prove he had received five – two of them unidentified – was overruled (R-114-115)

That, the next day, he went to Dawson's office where they had a conversation, about the three typewriters, and Dawson "said . . . he didn't need that many typewriters and offered twenty-five dollars for me to go and get them". (R-116-117)

That nevertheless, they "compromised and . . . came up with a price of a hundred and fifty dollars for . . . (Dawson) to keep two of the typewriters and I was supposed to go back and get one . . . which I never did . . ." (R-116-117)

McGee's Testimony on Cross

On cross examination, McGee testified:

That he did not "tell . . . (Dawson) the typewriters were stolen". (R-118-120)

That he had known Dawson before the typewriter "dealings," having been his client in an "accident case". (R-119-120)

McGee's Testimony on Re-Direct

On re-direct examination, McGee testified:

That he had taken the three typewriters, stolen from Virginia Paper Company, to Dawson's house "about 10:30, eleven o'clock" the same night he stole them (R-121) and visited Dawson's office the next morning "about nine o'clock" to sell them. (R-121)

Maddox's Testimony on Direct

On direct examination, Maddox testified:

That when he opened the Virginia Paper Office, on March

31, 1972, he discovered the theft of the three typewriters – two IBM's and a Remington. (R-236-239)

That in his opinion, the two IBM's were worth $500.00 each and the Remington $200.00. (R-247-248)

Maddox's Testimony on Cross

On cross examination, Maddox testified:

That he did not know that IBM typewriters, of the kind stolen, could have been purchased three years earlier, when they were new, for $525.00 each. (R-229-250)

QUESTION ONE: WHETHER PLAIN ERROR INFECTS A DISBARMENT PROCEEDING – RENDERING IT INHERENTLY SUSPECT – FOR PROSECUTORIAL MISCONDUCT PRECLUDING A FAIR TRIAL – WHERE THE ACCUSED ATTORNEY IS KNOWN, PROMINENTLY AS A PLAINTIFFS' ADVOCATE IN PERSONAL INJURIES CASES – AND THE RECORD SHOWS THE PROCEEDING WAS INSTIGATED, AND THE PROSECUTION MANAGED, BY SPECIALLY APPOINTED BAR COUNSEL KNOWN, EQUALLY PROMINENTLY, FOR REPRESENTATION OF INSURANCE COMPANIES IN PERSONAL INJURIES CASES – AND WHERE THE RECORD, FURTHER, SHOWS THAT THE CENTRAL CHARGE AGAINST THE ACCUSED ATTORNEY – viz

MAKING "ADVANCEMENTS" TO CLIENTS – WAS INVESTIGATED AND FRAMED AS WELL AS PROSECUTED, BY SUCH BAR COUNSEL – AND WHERE THE RECORD, FURTHER, SHOWS THAT TWO FORMER CLIENTS OF THE ACCUSED ATTORNEY TESTIFIED IN THE PROCEEDING, AS TO "ADVANCEMENTS" MADE TO THEM – AND WHERE THE RECORD, FURTHER, SHOWS THE APPEARANCE OF SUCH FORMER CLIENTS OF THE ACCUSED ATTORNEY AS WITNESSES AGAINST HIM HAD BEEN ARRANGED BY BAR COUNSEL WHO, BEFOREHAND, HAD SUMMONED THEM, BY SUBPOENA TO HIS PRIVATE LAW OFFICE FOR INTERROGATION AS TO WHAT THEY KNEW AND WOULD TESTIFY TO – AND WHERE THE RECORD, FURTHER, SHOWS THAT IN THE PERSONAL INJURIES ACTIONS BROUGHT BY THE ACCUSED ATTORNEY, ON BEHALF OF SUCH FORMER CLIENTS, BAR COUNSEL HAD BEEN ADVERSARY ATTORNEY OF RECORD FOR THE DEFENDANT INSURANCE COMPANIES – AND WHERE THE RECORD, FURTHER, SHOWS THAT NOTWITHSTANDING HIS PECUNIARY INTEREST IN THE PROCEEDING'S OUTCOME, AS DEMONSTRATED BY ALL THE FOREGO-

ING RECITALS, BAR COUNSEL, ON OBJECTION OF THE ACCUSED ATTORNEY, DECLINED TO CONCEDE IMPROPRIETY AND DISQUALIFY HIMSELF FROM PARTICIPATION IN THE ACCUSED ATTORNEY'S TRIAL – AND WHERE THE RECORD FURTHER SHOWS, THE PRESIDING REFEREE REFUSED TO COMPEL DISQUALIFICATION.

ARGUMENT

This controversy presents, at the threshold, a question, reserved in *Ruffalo*[7], but ripe for adjudication, here, which is to say, whether a disbarment proceeding is infected with the taint of plain error – rendering it inherently suspect – as trenching on an accused lawyer's fair trial guarantee – where the record shows the proceeding was instigated and managed by a Bar counsel, specially appointed for the purpose, who had an obvious pecuniary interest in the proceeding's outcome – by reason of his representation of clients – i.e., insurance companies – who, themselves, had notorious, retaliatory motive for attempting to purge the accused attorney – for his uncommon success as a plaintiffs' advocate in personal injuries cases.

Upon *Ruffalo's* indefinite suspension by the Ohio Supreme Court, Judge Battisti conducted an inquisition – for The Federal District Court, Northern District of Ohio – to de-

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7 *In the matter of John Ruffalo* 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222(1968)

termine whether the State Court action was acceptable – under the teachings of *Selling v. Radford*, 243 U.S. 46, 61 L.Ed. 585, 31 S.Ct. 377 (1917) – as an adequate basis for demolition of Ruffalo's Federal Bar credentials. *In re Ruffalo*, 249 F. Supp. 432 (1965)

Judge Battisti refused to recognize and enforce the Ohio suspension – and his refusal, in good part, was premised on his disapproval of the extent to which the proceeding was instigated and managed by The Association of American Railroads – Ruffalo's real adversary in F.E.L.A. cases in which he specialized.

His opinion drew an unappetizing portrait of the activities of the Railroad Association's investigators, saying:

That "From a reading of the entire record of the State disbarment proceedings, particularly the testimony of one Charles S. White, an employee of the Association of American Railroads, it seems clear that the genesis of the disbarment proceedings against . . . (Ruffalo) was an *investigation conducted by agents of The Association of American Railroads*".

That "after the investigation of said association had been completed, the results were turned over to *Attorney Jay Brownlee, then President of The Mahoning County Bar Association*" – who had "appeared, frequently as . . . the representative of the B & O Railroad" in District Court litigation.

That "these charges involved . . . (Ruffalo's) relationship with certain persons *contacted and interviewed by representatives of The Association . . . in the course of its investigation of . . . Ruffalo*".

That "The charges of indications of misconduct in the prosecution of . . . (Ruffalo) in large part arise out of the involve-

ment of the Association in the proceedings".

That "the involvement of the Association . . . in the proceedings was not insignificant, in fact, quite prominent. And, as noted above, *it is evident that the disbarment proceedings grew out of an investigation conducted by said association*".

That "*it seems equally evident, from a review of the entire record, that representatives of the Mahoning County Bar relied heavily upon the work of the said Association in the prosecution of . . . (Ruffalo)*".

That "while it is an obvious truth that the railroads have, over the years, been unjustly injured as a result of unethical practices of some attorneys, and while it is further clear that the railroads have an absolute right to attempt to remedy such injustices, it nonetheless follows that *they should not be permitted to use legal ethics or bar associations as a banner under which to unscrupulously advance their own economic self interests*".

That "*other courts have in the past and will in the future comment adversely upon bar associations or members thereof who become a party to an effort on the part of any special interest group to serve their own interests by or through disciplinary proceedings against members of the Bar.*"

Judge Battisti, in final analysis, did not denounce the proceeding – underlying Ruffalo's State Court suspension – as defective, per se, for impingement upon his fair trial guarantee – because only two, of the fourteen charges, on which he was convicted, by The Board of Commissioners On Grievances, were upheld by the Ohio Supreme Court – and "the evidence with regard to . . . (those, two) charges . . . (was) undisputed and, therefore, untainted by . . . (any) misconduct in the prosecution of the State disbarment proceedings."

Nevertheless, it is plain that Judge Battisti considered the "Ohio . . . proceedings" inherently suspect – by reason of the undesirable influence exercised by the Railroad Association – a consideration that prompted him to scrutinize, skeptically, even the untainted charges.

In an inquiry – independent of Judge Battisti's – The Sixth Circuit concluded it would honor Ruffalo's State Court suspension. *In the Matter of Ruffalo*, 370 F.2d 447 (1966)

The majority opinion made no mention of the prosecutorial misconduct issue – except en passant, saying, that Ruffalo argued "that the Association of American Railroads was guilty of questionable practice in investigating . . . (him) and that the American Railroads historically have unfairly resisted and impeded the presentation of claims by their employees" – but that such an argument, to prevail, would require announcement of "a rule that a lawyer may fight on any level chosen by his adversary . . ."

Nevertheless, it was the specter of that issue, that apparently moved This Court to grant certiorari to review The Sixth Circuit's derivative suspension of Ruffalo. *In the Matter of John Ruffalo* 390 U.S. 815, 19 L.Ed.2d 66, 88 S.Ct. 30 (1967)

What is certain, is that Mr. Justice Douglas' majority opinion – reversing – and ordering restoration of Ruffalo's Federal Bar standing – gave a factual backdrop of the controversy which focused on the questionable role of the Railroad Association – pointing out that Ruffalo *"was an active trial lawyer who handled many Federal Employees' Liability Act cases" – and that "The Association of American Railroads investigated his handling of claims and referred charges of impropriety to the President of the Mahoning County Bar Asso-*

ciation who was, also, local counsel for the Baltimore and Ohio Railroad Co." Re Ruffalo, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222 (1968)

Ultimately, however, the question whether the state Court proceeding was "defective" – for abuse by private interests – was pretermitted – and reversal ordered on a ground not asserted, directly, by Ruffalo – i.e., that he did not have fair notice of the charges against him before the proceeding began.

Mr. Justice Douglas' comment on the pretermission was: *"Nor do we stop to inquire whether the proceeding was defective because the Bar Association, the agency that made the charges against . . . (Ruffalo) was headed by counsel for the Baltimore & Ohio Railroad Co., against which . . . (Ruffalo) filed several of his claims.* For there is one other issue of the case which requires reversal."

Notwithstanding that it was not the axis on which the final disposition turned, grant of certiorari in *Ruffalo* – evinced this Court's concern about the constitutional overtones of a disciplinary proceeding – like the instant one against Dawson – resulting from the machinations of "any special interest group." See Judge Battisti's District Court decision in *Ruffalo*, supra.

And there are State Court cases abjuring, in effect, disciplinary proceedings bearing such stigmata. *In re Sizer*, 267 S.W. 922 (Mo. 1924); *In re Rerat* 44 N.W. 2d 273 (Minn. 1950); *State ex rel Turner* v. *Denman* 259 S.W. 2d 891 (Tenn. 1953); *Florida Bar* v. *Murrell* 74 S. 2d 221 (Fla. 1954); *In re Heirich* 140 N.E. 2d 825 (Ill. 1956)

The rule gatherable from Judge Battisti's *Ruffalo* pronouncement – and the array of state court cases – *Sizer, Rerat, Den-*

man, *Murrell* and *Heirich* – is that a disciplinary proceeding – seeking professional proscription of an accused attorney – will be deemed, per se, infected with plain error – rendering the proceeding inherently suspect – for prosecutorial misconduct – affronting the accused attorney's constitutional right to a fair trial – where the record shows the proceeding was instigated and managed by the accused attorney's known adversaries, having a patent pecuniary interest in his proscription.

And, the underlying record – as was shown in the Statement of Facts – brings the proceeding – resulting in Dawson's disbarment – within reach of the rule's condemnation.

The truth – put plainly – is that The Florida Bar abused its official power – in permitting prosecution of a disciplinary proceeding against Dawson – as a screen for a clandestine undertaking by his adversaries in personal injuries cases – i.e., insurance companies – to work his professional outlawry – an undertaking calculated to promote his adversaries' pecuniary interest – not the Purity of The Bar.

The moral authority of disciplinary proceedings is devalued by even the semblance of partisan manipulation – and this Court should intervene – in exercise of its conciliar power – to lay down constitutional guidelines designed to safeguard them against future manipulative use.

In fine, as Judge Battisti pointed out in *Ruffalo* – despoilment of the integrity of disciplinary proceedings by means of pretextual charges and subterfuge such as Dawson challenges – here – is a recurring evil – which This Court should declare constitutionally intolerable – as implicating, at least, "the

probability of unfairness" which *Murchison*[8] and the prophylactic rule it propagated in *Ward*,[9] *Barryhill*[10] – and similar cases[11] – were intended to prevent. See too, *Tuney v. Ohio* 273 U.S. 510, 71 L. Ed. 749, 47 S.Ct 437 (1927) *Re Oliver* 333 U.S. 275, 82 L. Ed. 682, 68 S.Ct. 499 (1948)

This Court, Dawson suggests, was prepared to make such a declaration in *Ruffalo* – but reserved it – for a future controversy.

This, perhaps, is that controversy.

QUESTION TWO: WHETHER AN ACCUSED ATTORNEY – IN A DISBARMENT PROCEEDING – IS DENIED DUE PROCESS – (1) FOR CONVICTION ON A CHARGE NEVER MADE and (2) FOR CONVICTION UNDER AN EX POST FACTO LAW – WHERE THE COMPLAINT CHARGES HIM WITH MAKING "ADVANCEMENTS" TO CLIENTS IN VIOLATION OF CERTAIN CANONS – BUT WHERE THE REFEREE CONVICTS HIM OF VIO-

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8 *In re Murchison* 349 U.S. 133, 99 L.Ed 942, 75 S.Ct. 623 (1955)

9 *Ward v. Village of Monroeville* 409 U.S. 57, 34 L.Ed.2d 267, 93 S.Ct 80 (1972)

10 *Gibson v. Berryhill* 411 U.S. 564, 36 L.Ed.2d 488, 93 S.Ct 1689 (1973)

11 *Commonwealth Coatings Corp v. Continental Casualty Co.* 393 U.S. 145, 21 L.Ed.2d 301, 89 S.Ct 337 (1968)

LATING AN ENTIRELY DIFFERENT CANON – AND WHERE THE STATE SUPREME COURT, REVIEWING THE CONVICTION, UPHOLDS IT, ON THE THEORY IT VIOLATES NEITHER THE CANONS CHARGED IN THE COMPLAINT, NOR THE CANON INVOKED BY THE REFEREE, BUT AN "ETHICAL CONSIDERATION" MERELY ASPIRATIONAL IN NATURE – AND WHERE SUCH ETHICAL CONSIDERATION WAS NOT IN EXISTENCE AS OF THE DATES ON WHICH THE ALLEGED "ADVANCEMENTS" WERE MADE.

ARGUMENT

Dawson contends that the proceeding against him was ceremonial, only – that his conviction, on one or the other of the pretextual charges, was predetermined – and that the proceeding moved to that predetermined end, mindlessly.

Careful analysis of – the Complaint, the Referee's Report and The Florida Supreme Court's opinion – shows, for example, that, as to "Advancements", Dawson was convicted on a charge never made – under a Canon not in existence – as of the time of the "Advancements".

More specifically, analysis shows:

The Complaint charged:

That – during the period from January, 1969 to November 13, 1972 – when the proceeding was commenced – Dawson "customarily and routinely made monetary advance-

ments to clients for purposes other than expenses of litigation"; – and –

That in making them, he "violated his oath as an attorney, and also violated Rule 11:02 of Article XI of the Integration Rule, *Canons 1 and 5 of the Code of Responsibility* and Rules 27 and 32 of the Additional Rules governing the conduct of lawyers in Florida."

But the Referee's Report – recommended that Dawson "be found guilty of violating his oath of admission, the Integration Rule of The Florida Bar, and *Canon 10 . . . of The Old Canons of Professional Ethics* and Rules 27 and/or 32 of the additional Rules governing the conduct of attorneys in Florida."

The charge and recommended conviction – insofar as they predicate violations of the Oath of Admission, the Integration Rule and Rules 27 and 32 – may be passed over – without pause – for they, manifestly, are irrelevant boiler plate.[12]

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12 The Oath of Admission, merely, enjoins Florida attorneys "to support the constitution of the United States and the State of Florida – and to eschew Communist party membership" – an injunction, it cannot be said, Dawson, violated. (See Rule 11:02 (1) of the Integration Rule.)

Rule 11:02 of the Integration Rule is, merely, a general statement of "principles . . . (which) shall govern conduct of members of The Florida Bar" . . . none of which has been invoked, specifically, against Dawson.

And Rules 27 and 32 are too vague to support a conviction for unauthorized "advancements" – Rule 27 providing, that "It shall be the duty" – of all members of The Florida Bar not to "Be guilty of any deceit or wilful misconduct, and Rule 32 providing that "Any attorney

The noteworthy thing – constitutionally speaking – is that the complaint charged violations of Canons 1 and 5 of The Code of Professional Responsibility–which, respectively, command that "A Lawyer should assist in manifesting the integrity and competence of the Legal Profession" and that "A Lawyer should exercise Independent Professional Judgment on Behalf of a Client" – while the Referee's Report found guilt on the basis of a violation of old Canon 10 commanding that "The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting".[13]

The Referee, accordingly, convicted Dawson on a charge never made, constituting "a sheer denial of due process"[14]

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12 (Continued)
who shall do or be guilty of any of the acts forbidden or prohibited by law or rules of Court may be subject to disciplinary action by public or private reprimand, or by suspension and disbarment therefrom". (See Professional Ethics, Selected Opinions of The Committee on Professional Ethics of The Florida Bar, pages XXVIII through XXXI)

13 See Professional Ethics, Selected Opinions of the Professional Ethics Committee, The Florida Bar, 1959 - 1967, Appendix XII.

14 As will be dealt with, more particularly, infra, The Referee – as a matter of conjecture – may have renounced Canons 1 and 5 because he thought them too "Draconian" to be relied on – but, more probably, he was aware that there was no competent evidence, in the record, that Dawson had made an "advancement" after May 1, 1970 – when Pryor received $100.00 – making Canons 1 and 5 inapplicable – since they were not adopted until October 1970, *In Re The Integration Rule of The Florida Bar* 235 So.2d 723 (Fla, 1970)

Ex Parte Bradley 7 Wall 364, 19 L.Ed 214; *In Re Bennethum* 196 F.Supp. 541 (D.Del. 1961); *DeJonge v. Oregon* 299 U.S. 353, 57 S.Ct 255, 81 L.Ed 278 (1936); *Cole v. Arkansas* 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed 644 (1948)

The surpassing constitutional grotesquery, however, is that The Florida Supreme Court approved Dawson's conviction and disbarment on the theory he had violated Ethical Consideration 5-8 – neither charged in the Complaint – nor mentioned in the Referee's Report – and which has to do with advances to clients in the form of loans.[15]

The "Preliminary Statement" to The Florida Bar's Code of Ethics declares, expressly, that "The Ethical considerations are aspirational in character and represent the objectives toward which every member of the profession should strive." – which suggests they are hortatory, rather than mandatory, and, therefore, infirm, organically, to underpin a disciplinary proceeding.

But, in all events, Dawson was not charged with an offense against Ethical Consideration 5-8 – and The Florida Supreme Court, a fortiori, convicted him on a "charge never made". *Ex Parte Bradly*, supra; *In Re Bennethum*, supra; *DeJonge v. Oregon*, supra; *Cole v. Arkansas*, supra.

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15 EC 5-8. A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. Although the assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, but the ultimate liability for such costs and expenses must be that of the client.

Moreover, the record is barren of competent evidence that Dawson made an "Advancement" to a client subsequent to May 1, 1970[16] – and Ethical Consideration 5-8 was not adopted until October 1, 1970 – *In Re Integration Rule of The Florida Bar* 235 So.2d 723 (Fla.1970) from which it follows, automatically, that he is in peril of punishment under an ex post facto law – proscribed by Article 1, Section 10 of the Constitution. *Cummings* v. *Missouri* 4 Wall 277, 18 L.Ed. 356, (1867); *Bouie v. Columbia* 378 U.S. 347, 84 S.Ct. 1697, 12 L.Ed.2d 894 (1964)

QUESTION THREE: WHETHER AN ACCUSED ATTORNEY – IN A DISBARMENT PROCEEDING – IS DENIED DUE PROCESS – FOR WANT OF FAIR NOTICE THAT HIS ACTS MIGHT BE DEEMED PROFESSIONAL MISCONDUCT WARRANTING DISBARMENT – WITHIN THE MEANING OF MR. JUSTICE WHITE'S CONCURRING OPINION IN *RUFFALO* – WHERE THE ACCUSED ATTORNEY IS

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16 Joan Clark testified that while employed by Dawson, during the period from August 1969 to March 1971, she saw "Advancements" made (R-152) but her testimony was incompetent, clearly, because in the course of discovery The Bar limited its proof, as to "Advancements" to those made to Pryor and Mrs. Whatley (R-153-157) about which Ms. Clark knew nothing. Assuming, arguendo, her testimony was competent, nonetheless it was devoid of evidentiary value for her inability, admitted by her, to identify, specifically, the date, time, place or amount of a single "advancement" – nor the identity of a client to whom one was made. (R-229-232)

Thus, the record shows, conclusively, that the last "advancement" made by Dawson – and proved at trial – was made to Pryor at a date no later than May 1, 1970 (R-67-70)

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CHARGED AND CONVICTED OF MAKING "ADVANCEMENTS" TO CLIENTS – NOTWITHSTANDING THAT AT THE TIME HE MADE THEM, THEY WERE NOT CONDEMNED AS UNAUTHORIZED UNDER THE SETTLED DECISIONAL LAW OF THE SUBJECT JURISDICTION, NOR MOST AMERICAN JURISDICTIONS, GENERALLY.

ARGUMENT

At the time of the advancements to Pryor and Mrs. Whatley, in 1970, Dawson had no reason to believe they violated the professional canons – but, to the contrary, had good reason to believe them blameless – inasmuch as the general rule in American Jurisdictions – and the settled decisional law of Florida – made up, in part, of a landmark case involving Dawson, himself – declared that an attorney might make ""advancements" to clients in the form of loans – including those made, in modest amounts, for "living costs" for indigent or necessitous clients – in the absence of any showing that they were made to induce employment or prevent discharge – a showing not made here. *Florida Bar* v. *Dawson* 111 S.2d 427 (Fla. 1959); *Florida Bar* v. *Rhubottom* 132 So.2d 395 (Fla. 1961)

In 1957, Dawson was convicted – and suspended from practice for eighteen months, on a charge, inter alia, of "entering into agreement that he would bear all expenses in the event of no recovery in particular matters *in consideration of his professional employment by the people involved*". See *Florida Bar* v. *Dawson*, supra. Page 428

The Florida Supreme Court upheld the conviction on the theory that the agreements were made as in advancements, to "potential clients to employ . . . (Dawson) . . . professionally".

But the Court disavowed, expressly, any intention to interdict post-employment "advancements" not made as "promises" or "conditions to obtaining employment".

In *Rhubottom* – what might be called the rule in *Dawson's* case – was elasticized to prohibit "advancements" "for the purpose of preserving employment" – the Court opining that "While it does not appear that . . . Rhubottom used his agreement . . . as inducement to obtaining employment" – and while "We did say in . . . *Dawson* . . . that a lawyer is not prohibited from a good faith advance of expense in the course of litigation as a matter of convenience" – still . . . "this does not contemplate the investment of large sums of money both in litigation costs and living costs . . . for the purpose of preserving employment" – since "We can detect little difference between promising money to get a client and paying out large sums to retain one". *Florida Bar* v. *Rhubottom*, supra. Page 399.

Both Pryor and Mrs. Whatley testified the monies they received had no relationship to their decisions to employ Dawson – nor to continue his employment.

The Referee, nonetheless, convicted Dawson of a Canon 10 violation.

The Referee voted to convict on two legal assumptions – (1) That advancements for "living costs" are not authorized per se, and (2) That failure to prosecute claims for reimbursement of advancements made in losing causes – establishes impropriety, retrospectively, as it were –

And both those assumptions were erroneous under Florida law and the general law – and Dawson had no reason to believe he would have to reckon with them in assessing whether the "advancements" to Pryor and Mrs. Whatley were proper or improper.

For example, in *Rhubottom* – where the question was presented, squarely, "advancements" for "living costs" were not condemned – as such – and a reading of the opinion in that case, by Dawson, would not have informed him fairly that he would have to avoid advancements for similar purposes – but, rather would have informed him that they were permissible – if not so excessive and pervasive as to indicate a corrupt intent to buy clients.

Moreover, the majority rule is that "advancements" made to disabled, destitute clients for "living costs" do not violate Canon 10 – forbidding lawyers from acquiring a pecuniary interest in litigation they handle – nor Canon 42 – forbidding lawyers from bearing "the expense of litigation" but authorizing "good faith" advances of "expenses as a matter of convenience subject to reimbursement". *Dambey Tyler & Grieser* v. *Detroit I & I R Co.* 351 F.2d 121 (6th Cir. 1965); *In re Sizer,* supra. *People ex rel Chicago Bar Association* v. *McCallum* 173 N.E. 827 (Ill. 1930)

And, ironically, Dawson's conviction – per Canon 10 – on the assumption he should have known "advancements to his clients for purposes unrelated to the conduct of . . . litigation" – viz for "living costs" – were illegitimate – attributes to him a higher order of intelligence and discernment than possessed by Judge Battisti who wrote the District Court opinion in *Ruffalo* – and Judge Edwards who wrote a dissenting opinion in *Ruffalo,* in the Sixth Circuit – both of whom cited the Florida Supreme Court's 1959 *Daw-*

son decision as illustrative of the general rule that "advancements" for purposes other than the actual cost of litigation are not objectionable unless known to be "a general practice employed . . . so as to become widely known and hence to constitute an economic attraction for potential clients . . ." a showing not made against Dawson on the basis of the trifling sums advanced to Pryor and Mrs. Whatley.

Neither could Dawson have believed, reasonably, that he hazarded his professional career in failing to demand – or sue for – reimbursement from Pryor and Mrs. Whatley after their cases were lost.

There is no Florida case that speaks to such a proposition – and the near universal rule, in other jurisdictions, is to polar effect, which is to say, that, generally, "advancements" are made to disabled, indigent clients – of which Mrs. Whatley is typical – and to refuse them "advancements" – as bad "credit risks" vis-a-vis future reimbursement, should they lose their law suits, would be to deny them, effectively, the opportunity to enforce their claims and "obtain justice". *In re Ruffalo* 249 F.Supp 432 (N.D. Ohio 1946); *In re Sizer,* supra; *People ex rel Chicago Bar Association* v. *McCallum,* supra; *Grievance Committee* v. *Nevos* 96 A.2d 802 (Conn. 1963)

Bar Counsel, in words or effect, conceded the Pryor-Whatley loans, or "advancements", did not violate Canon 10, as interpreted by The Florida Supreme Court – prior to October, 1970, when the Code of Professional Responsibility was adopted. (R-447-448)

Probably, as suggested earlier, the Referee convicted Dawson of violating "Old Canon 10" despite Bar Counsel's concession – because the Referee knew the Code of Responsibility did not come into being until subsequent to the Pryor-

Whatley "advancements" – and that Dawson had to be convicted per Canon 10, or not at all – whether consistent with precedent, or not.

The Referee overlooked, however, that the result of the Canon 10 conviction, was to deprive Dawson of due process – for want of fair notice – within the meaning of Mr. Justice White's concurring opinion in *Ruffalo*, in that Dawson cannot be "deemed to have been on notice that the Court would condemn the conduct for which he was . . . (disbarred)."

It was, perhaps, the "fair notice" infirmity – as articulated by Mr. Justice White – that prompted the Florida Supreme Court to reject the Referee's Canon 10 finding – and approve Dawson's conviction under Ethical Consideration 5-8, which purports to discountenance loans to clients except in certain circumstances.

Of course, as discussed under Question Two, switching the predicate of the conviction from Canon 10 to Ethical Consideration 5-8 collided with Article I, Section 10 – prohibiting ex post facto laws. Admittedly, the language in EC 5-8 is at the least ambiguous, and, together with the decision in the case of Fla. Bar v. Dawson, 111 So. 2d 427 (1959), together with the general laws of the United States shows clearly that reasonable men could differ in their interpretations and as was so amply said in the opinion of Mr. Justice Hardan, concurring opinion by Mr. Justice White, joined by Mr. Justice Marshall in *Ruffalo*, 390 U.S. 544, 20 L.Ed.2d 117, 88 S.Ct. 1222

> "I would hold that a federal court may not deprive an attorney of the opportunity to practice his profession on the basis of a determination after the fact that conduct is unethical if responsible attorneys would differ in appraising the propriety of that conduct."

QUESTION FOUR: WHETHER AN ACCUSED ATTORNEY – IN A DISBARMENT PROCEEDING – CHARGED WITH "CUSTOMARILY AND ROUTINELY" MAKING "MONETARY ADVANCEMENTS – TO CLIENTS FOR PURPOSES OTHER THAN EXPENSES OF LITIGATION" DURING A THREE AND A HALF YEAR PERIOD – TERMINATING AS OF THE DATE THE DISBARMENT PROCEEDING WAS COMMENCED – IS VICTIMIZED BY DENIAL OF DUE PROCESS – FOR LACK OF EVIDENCE IN THE RECORD TO SUPPORT A RATIONAL CONCLUSION OF GUILT – WITHIN THE MEANING OF *SCHWARE*[15] AND *THOMPSON*[16] WHERE THE EVIDENCE CONSISTS, ENTIRELY, OF THE TESTIMONY OF TWO FORMER CLIENTS AND A FORMER EMPLOYEE OF THE ACCUSED ATTORNEY – AND WHERE THE TESTIMONY OF ONE OF THE FORMER CLIENTS WAS THAT HE RECEIVED ONE "ADVANCEMENT" OF ONE HUNDRED ($100.00) DOLLARS ON A DATE TWO AND A HALF

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15 *Schware* v. *Board of Bar Examiners* 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1959)

16 *Thompson* v. *Louisville* 362 U.S. 199, 808 S.Ct. 624, 4 L.Ed.2d 654 (1963)

YEARS PRIOR TO COMMENCEMENT OF THE DISBARMENT PROCEEDING – AND WHERE THE OTHER FORMER CLIENT'S TESTIMONY WAS THAT SHE HAD RECEIVED ADVANCEMENTS OF FIFTY DOLLARS PER WEEK – FOR "ABOUT TWO MONTHS" – WHILE SHE WAS DISABLED TO WORK – AND SUCH ADVANCEMENTS WERE MADE TWO AND A HALF YEARS PRIOR TO COMMENCEMENT OF THE DISBARMENT PROCEEDINGS – AND WHERE THE FORMER EMPLOYEE'S TESTIMONY WAS THAT SHE OBSERVED WEEKLY ADVANCEMENTS MADE TO CLIENTS WHOSE NUMBER SHE COULD NOT "BEGIN TO GIVE . . . AN IDEA" OF – BUT MIGHT HAVE BEEN "A HUNDRED, A COUPLE OF HUNDRED" – ALTHOUGH SHE DID NOT RECALL THE NAME OF A SPECIFIC CLIENT TO WHOM – NOR A SPECIFIC DATE ON WHICH–AN "ADVANCEMENT" WAS MADE – NOR THE PURPOSE FOR WHICH IT WAS MADE – AND WHERE BOTH FORMER CLIENTS TESTIFIED THAT THE "ADVANCEMENTS" HAD BEEN MADE TO THEM SUBESEQUENT TO THEIR EMPLOYMENT OF THE ACCUSED ATTORNEY – AND THAT SUCH "ADVANCENEY – AND AND THAT "ADVANCE-

MENTS" HAD NO CONNECTION AT ALL, WITH THEIR DECISION TO EMPLOY HIM – NOR TO CONTINUE HIS EMPLOYMENT.

ARGUMENT

Schware[17] holds, without sophistry, that a lawyer may not be anathematized where "There is no evidence in the record which rationally justifies a finding that . . . (he is) morally unfit to practice law" – a holding enlarged upon in *Thompson*[18] to mean that "Just as conviction upon a charge never made would be a sheer denial of due process 'it is a denial of due process' to convict and punish a man without evidence of his guilt."

Dawson's conviction – on the "advancements" charge – cannot be reconciled with *Schware* and *Thompson.*

He was charged, it must be repeated, with "customarily and routinely" making "advancements" during a period of four years – from January 1, 1969 to the date the Complaint was filde on November 13, 1972 – but the competent evidence, in the record, consists, entirely, of the testimony of Pryor – who testified that he – while disabled – received a solitary "advancement" of one hundred ($100.00) dollars[19] – made to him in April or May 1970 (R-37-38) which had no connection with his employment of Dawson (R-43) – and the

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17 1 L.Ed.2d at 806.

18 4 L.Ed.2d at 659.

19 Pryor was, also, advanced twenty-four ($24.00) dollars to pay a doctor's bill (R-39) but The Bar did not challenge its propriety.

testimony of Mrs. Whatley – who testified that she – while disabled – received what she called "salary replacement" checks of fifty ($50.00) dollars each – for eight weeks – ending about March 1, 1970[20] – which had no connection with her employment of Dawson – and which she was told she would have to repay from the proceeds of her personal injury action. (R-66-70, 83-85)[21]

In sum, then, in support of the charge that Dawson "customarily and routinely made advancements to clients" – for a four-year period – terminating on November 13, 1972 – The Bar's sole proof was that he made isolated "advancements" to two clients – more than two and one-half years prior to November 13, 1972.

If *Schware* and *Thompson* mean what they say – Dawson's conviction – on the "advancements" charge – cannot be sustained.

QUESTION FIVE: WHETHER AN ACCUSED ATTORNEY – IN A DISCIPLINARY PROCEEDING – MAY BE CONVICTED

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20 Mrs. Whatley was uncertain as to the exact dates of the "advancements" to her – except that they began about a month after she employed Dawson – which was in the last week of December, 1969, or the first week of January 1970 – and continued for eight weeks, which means, necessarily, that the last was received on or about March 1, 1970.

21 Joan Clark testified that she had seen "advances" made while she worked as a secretary to Dawson from August 1969 to March 1971 – but her testimony, if not incompetent, had no probative value for the reasons given in footnote 16, supra.

AND DISBARRED – CONSISTENT WITH *SCHWARE* AND *THOMPSON* – ON A CHARGE OF "RECEIVING STOLEN PROPERTY" – NOTWITHSTANDING A CONCESSION BY THE STATE COURT, OF FINAL REVIEW, THAT THE EVIDENCE WAS SO "CIRCUMSTANTIAL AND UNCONVINCING THAT IT WOULD NOT WARRANT CONVICTION AND DISBARMENT" – EXCEPT CONSIDERED, CUMULATIVELY, WITH ANOTHER "PROVEN CHARGE".

ARGUMENT

The Complaint charged – in Count IV – that Dawson, knowingly, received and concealed three stolen typewriters – but the thief – McGee – testified he did not tell Dawson they were stolen (R-102, 107-109, 116-118) – and that Dawson bought two of them, reluctantly, and ordered him "to go back and get" the third. (R-116-118)

The Referee convicted Dawson, nevertheless, reasoning that he should have known their origin. (A - 25)

The Florida Supreme Court confessed, however, that the evidence was so "circumstantial" and tenuous that "We would not be inclined to disbar . . . (Dawson) if this were the only offense with which he had been charged. Taken with the other *proven charge* . . . (as to advancements) we believe the public will best be protected if . . . (Dawson) is denied continued permission to engage in the practice of law in Florida."

When it is considered that the burden of proof required in a Florida disciplinary proceeding is "clear and convincing evidence", only[22] – and that the evidence, against Dawson, was too frail to satisfy even that requirement – his conviction, perforce, was constitutionally impermissible – under *Schware* and *Thompson*.

QUESTION SIX: WHETHER THE SIXTH AMENDMENT GUARANTEE – THAT "*IN ALL CRIMINAL PROSECUTIONS*, THE ACCUSED SHALL ENJOY THE RIGHT TO A . . . PUBLIC TRIAL, BY AN IMPARTIAL JURY" . . . TOLERATES A SECRET TRIAL WITHOUT A JURY – IN A *QUASI-CRIMINAL PROSECUTION*, THAT IS: IN A DISBARMENT PROCEEDING–MOST PARTICULARLY, WHERE AS HERE, THE ACCUSED ATTORNEY – IN SUCH A PROCEEDING–IS CHARGED AND CONVICTED OF THE COMMISSION OF A CRIME–i.e., "RECEIVING STOLEN PROPERTY" – NOTWITHSTANDING **THAT A COURT COMPETENT JURISDICTION**, PREVIOUSLY, HAD ENTERED A NOLLE PROSEQUI DISMISSAL – IN THE ATTORNEY'S FAVOR – AS TO THE SAME, ALLEGED CRIMINAL TRANSACTION – FOR WANT OF EVIDENCE.

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22 *Florida Bar* v. *Rayman* 238 So.2d 574 (Fla. 1970)

ARGUMENT

Dawson requested a Jury trial – when he appeared before the Referee and raised the denial, as error, on his appeal to the Florida Supreme Court, futilely.

And he grants that *Ex Parte Wall* 107 U.S. 265, 27 L.Ed. 552, 2 S.Ct. 569 (1883) looms as a barrier to assertion of the right to Jury trial in disciplinary proceedings.

Wall, however, was decided at an antique time, when lawyers, virtually, were men without a constitution.

And *Wall's* premises have been swept away.

One of those premises – that disciplinary proceedings should be deemed inquisitorial in nature – was undone by *Spevack*[23] and *Ruffalo* – re-classifying them "adversarial".

Another premise was that disbarment "is not a criminal proceeding and not intended for punishment" – a premise, also overthrown by *Spevack* – denominating disbarment, essentially, penal in purpose – and *Ruffalo* declaring *"These are adversary proceedings of a quasi-criminal nature."*

Indeed, this Court's, systematic and progressive, judicial drive – as unfolded in *Schware*, *Willner*[24], *Spevack* and *Ruffalo* – has been to mantle lawyers – in disciplinary proceedings – with the Commandments of the Fifth and Sixth Amendments – and withholding the right to Jury trial can be justified, only, on the preconception that it is of lesser constitutional dignity.

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23 *Spevack* v. *Klein* 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967)

24 *Willner* v. *Committee on Character & Fitness* 373 U.S. 96, 83 S.Ct. 1175, 10 L.Ed.2d 224 (1963)

Mr. Justice Field's impassioned dissent – in *Wall* – will be vindicated, sooner or later.

And this Court's new militance – in defense of equal justice for lawyers – speaks for vindication, now.

WHEREFORE, Dawson prays that this Court will issue a Writ of Certiorari to the Supreme Court of Florida to review the Judgment of Disbarment against him.

Gerald R. Hart

GERALD R. HART
333 East Bay Street
Jacksonville, Florida 32202
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3d day of September, 1975, the Original of the foregoing has been furnished the Clerk of the Florida Supreme Court, and a copy furnished to David G. McGunegle, Assistant Staff Counsel for the Florida Bar.

Gerald R. Hart

GERALD R. HART
333 East Bay Street
Jacksonville, Florida 32202
Attorney for Petitioner

Supreme Court, U.S.
FILED
SEP 30 1975

No. 75-4981

WILLIAM R. DAWSON, III,
Petitioner,

-vs-

THE FLORIDA BAR,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

APPENDICES

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October, 1975

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APPENDIX I

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

vs. CONFIDENTIAL

WILLIAM B. DAWSON, III,

Respondent.

COMPLAINT

The Florida Bar, complainant, files this Complaint against William B. Dawson, III, respondent, pursuant to Article XI of the Integration Rule of the Florida Bar, as amended, and alleges:

COUNT I

1. The Respondent, William B. Dawson, III, is, and at all times hereinafter mentioned was, a member of the Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. This Complaint is filed by The Florida Bar, by direction of its Board of Governors, and all conditions prerequisite to the filing of said Complaint, required by the Integration Rule, have been fulfilled.

3. On July 23, 1970, William Eugene Scott and Henry Robinson were involved in a collision of two automobiles when the vehicle driven by William Eugene Scott and occupied only by Henry Robinson, collided with a vehicle driven

by Margaret Osborne Speagle and insured by State Farm Mutual Automobile Insurance Company.

4. At the scene of said collision, William Eugene Scott and Henry Robinson falsely and fraudulently reported to the investigating police officer that the passengers in their vehicle at the time of said collision were Andrew Scott, Aaron Brown, and Larry Watts.

5. On the same date, July 23, 1970, the accused attorney, William B. Dawson, III, after consulting with William Eugene Scott and Henry Robinson, regarding the above mentioned accident, submitted to State Farm Mutual Automobile Insurance Company claims for personal injury and property damage on behalf of William Eugene Scott, Andrew Scott, Aaron Brown and Larry Watts, as a result of the collision heretofore, mentioned with full knowledge that Andrew Scott, Aaron Brown and Larry Watts were not involved in said collision.

6. On July 24, 1970, the accused attorney, in settlement of the above mentioned claims, received from State Farm Mutual Automobile Insurance Company three checks in the amount of $750 each: one payable to Andrew Scott and his attorney, William B. Dawson; one payable to Aaron Brown and his attorney, William B. Dawson, and one payable to Larry Watts and William B. Dawson, his attorney, and a fourth check in the amount of $879 made payable to William Eugene Scott and William B. Dawson, his attorney, which check showed a payment of $750 for personal injury and $129 for property damage claim.

7. Thereafter, releases and affidavits, in settlement of said claims, were, with knowledge of the accused attorney, William B. Dowson, III, signed by Henry Robinson, Dewitt Robinson and George Robinson, by falsely and fraudulently using

the names of Andrew Scott, Aaron Brown and Larry Watts.

8. The checks made payable to Andrew Scott, Aaron Brown and Larry Watts were, with the knowledge of the accused attorney, William B. Dawson, III, endorsed by Henry Robinson, Dewitt Robinson, and George Robinson by falsely and fraudulently signing the names of Andrew Scott, Aaron Brown, and Larry Watts and were co-endorsed by the accused attorney, William B. Dawson, III. In due course, said checks were paid by State Farm Mutual Automobile Insurance Company.

9. By reason of the foregoing, the Respondent has violated his oath as an attorney, and has also violated Rule 11.02 (3) of Article XI of the Integration Rule, Canons 1, 7 and 8 of the Code of Professional Responsibility, and Rules 27 and 32 of the Additional Rules Governing the Conduct of Attorneys in Florida.

COUNT II

1. The Complainant realleges those allegations contained in paragraphs 1 and 2 of Count 1 herein.

2. From the period beginning on or about January 1, 1969, through February 28, 1971, the accused attorney, William B. Dawson, III, together with Dr. Archie T. Frazier, participated in a fraudulent scheme whereby certain medical bills were submitted to the accused attorney by said Dr. Archie T. Frazier for medical services allegedly rendered on behalf of clients of accused attorney, William B. Dawson, III, and thereupon submitted by the accused attorney to various liability insurance carriers in connection with settlements of various liability claims. Upon settlement of said claims the various amounts, representing the amount of the medical bills,

were deducted from the proceeds payable to the accused attorney's clients, but said amounts were not remitted to the said Dr. Archie T. Frazier, as had been represented to the various clients.

3. There was, in effect, an agreement between Dr. Archie T. Frazier and the accused attorney, William B. Dawson, III, whereby Dr. Frazier received certain varying amounts of regular weekly compensation unrelated to the medical services rendered by him to any particular client of the accused attorney, William B. Dawson, III.

4. By reason of the foregoing, Respondent has violated his oath as an attorney, and has also violated Rule 11.02(3) and (4) of Article XI of the Integration Rule, Canons 1, 3, 8 and 9 of the Code of Professional Responsibility, and Rule 27 and 32 of the Additional Rules Governing the Conduct of Attorneys in Florida.

COUNT III

1. The Complainant realleges those allegations contained in paragraphs 1 and 2 of Count I herein.

2. From on or about January 1, 1969, up to and including the present time, the accused attorney has customarily and routinely made monetary advancements to his clients for purposes other than expenses of litigation.

3. By reason of the foregoing, Respondent has violated his oath as an attorney, and has also violated Rule 11.02 of Article XI of the Integration Rule, Canons 1 and 5 of the Code of Professional Responsibility and Rules 27 and 32 of the Additional Rules Governing the Conduct of Attorneys in Florida.

COUNT IV

1. The Complainant realleges those allegations contained in paragraphs 1 and 2 of Count I herein.

2. That on or about March 31, 1972, the accused attorney, William B. Dawson, III, did unlawfully and feloniously receive and aid in the concealment thereof, certain stolen property, to wit: two IBM Electric typewriters and one Remington Electric typewriter, both (sic) the property of Virginia Paper Company, a corporation; and one SCM Marchant Adding Machine, the property of Mercedes Benz, Inc., a corporation. The accused attorney, William B. Dawson, III, knew that said property was stolen.

3. By reason of the foregoing, respondent has violated his oath as an attorney, and has also violated Rule 11.02(3) of Article XI of the Integration Rule, Canons 1 and 8 of the Code of Professional Responsibility, and Rules 27 and 32 of the Additional Rules Governing the Conduct of Attorneys in Florida.

COUNT V

1. The Complainant realleges those allegations contained in paragraphs 1 and 2 of Count I herein.

2. That the accused attorney did, following an automobile accident which occurred on March 16, 1968, attempt to solicit employment from one Benjamin J. Strickland, who was injured in said accident, for the purposes of representing him in his claim for person (sic) injury as the result of said accident.

3. On October 4, 1968, without having proper authority to represent said Benjamin J. Strickland, the accused attorney,

William B. Dawson, III, did file an uninsured motorist claim with the American Arbitration Association against the Fidelity and Casualty Company of New York, a liability insurance carrier, to recover for the personal injuries sustained by said Benjamin J. Strickland.

4. By reason of the foregoing Respondent has violated his oath as an attorney and has also violated Rule 11.02(3) and (5) of Article XI of the Integration Rule, Canon I of the Code of Professional Responsibility, and Rules 27 and 32 of the Additional Rules Governing the Conduct of Attorneys in Florida.

COUNT VI

1. The complainant realleges those allegations contained in paragraphs 1 and 2 of Count I herein.

2. Following the accident described in Count V herein, without having any authority whatsoever, the accused attorney filed a claim on October 1, 1968, with the American Arbitration Association against the Fidelity and Casualty Company of New York, on behalf of one Margaret Alice Young for personal injuries sustained by the said Margaret Alice Young in said accident.

3. The said Margaret Alice Young had never met, spoken with, or authorized the accused attorney, William B. Dawson, III, to take any action in her behalf, nor did she employ him in any way or fashion as her attorney.

4. By reason of the foregoing, Respondent has violated his oath as an attorney, and also violated Rule 11.02 of Article XI of the Integration Rule, Canon 1 of the Code of Professional Responsibility, and Rules 27 and 32 of the Additional Rules Governing the Conduct of Attorneys in Florida.

WHEREFORE, the Complainant prays that the Respondent may be appropriately disciplined in accordance with said Article XI of the Integration Rule of The Florida Bar.

/s/ S. Thompson Tygart, Jr.

S. Thompson Tygart, Jr.
Counsel for Complainant
6414 Arlington Road
Jacksonville, Florida

APPENDIX II

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

JULY TERM, 1975

THE FLORIDA BAR,

Complainant,

vs.

WILLIAM B. DAWSON, III,

Respondent.

CASE No. 46,948

Opinion filed July 24, 1975

Case of Original Jurisdiction – The Florida Bar

S. Thompson Tygart, Jr., Bar Counsel; James T. Terrell, Jr., Assistant Bar Counsel; and David G. McGunegle, Assistant Staff Counsel, for Complainant

William A. Hallowes and Edward M. Booth, for Respondent

PER CURIAM.

Pursuant to Article XI, Rule 11.09(3) of the Integration Rule of The Florida Bar, respondent has petitioned for a review of the report and recommendation of a referee appointed in a Bar disciplinary proceeding. The referee has recommended respondent's disbarment on the grounds that he knowingly received stolen property and knowingly accepted a financial interest in the outcome of a client's liti-

gation. The referee's findings of fact on these two charges essentially show:

1. that respondent repeatedly made monetary advancements to his clients for purposes unrelated to the conduct of their litigation, and if a client's case was lost no effort was made to recover the advancements. Respondent's secretary testified to a "Friday payroll" for a significant number of clients.

2. that respondent received five stolen typewriters, four of which he subsequently purchased, from an admitted thief. Although the thief never told respondent that the typewriters were stolen, the referee found that the price paid was significantly below the market value for like equipment, that the transactions occurred at an unusual hour and location, and that taken together these facts were sufficient to establish that respondent knew or should have known that the merchandise was stolen.

Our independent review of the record on the first charge indicates that there was clear and convincing evidence before the referee to justify his finding that respondent violated Ethical Consideration 5-8 of the Florida Code of Professional Responsibility, which states that a financial interest in the outcome of litigation results if monetary advances are made by a lawyer to his client. The record further substantiates the referee's recommendation that respondent should be disbarred based on his complete inability to comprehend the responsibility of an attorney admitted to practice in this state.[1]

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1. Respondent was previously disciplined for similar misconduct involving money advances to clients. State v. Dawson, 111 So.2d 427 (Fla. 1959).

Our independent review of the record on the second charge indicates that there was sufficient evidence to support the referee's findings that respondent knew or reasonably should have known that typewriters brought to his home in the middle of the night were stolen property. Because this finding is based in part on circumstantial evidence, however, we would not be inclined to disbar respondent if this were the only offense with which he had been charged. Taken with the other proven charge, however, we believe the public will best be protected if respondent is denied continued permission to engage in the practice of law in Florida.

The report of the referee is adopted and the recommendation of disbarment is approved.

Accordingly, the respondent William B. Dawson, III is disbarred from the practice of law in Florida.

It is so ordered.

ADKINS, C.J., ROBERTS, BOYD, OVERTON and ENGLAND, JJ., Concur

APPENDIX III

IN THE SUPREME COURT OF FLORIDA

BEFORE DANIEL R. COFFMAN, JR., REFEREE

THE FLORIDA BAR,

Complainant,

v. CONFIDENTIAL

WILLIAM B. DAWSON, III,

Respondent.

REPORT OF REFEREE

February 10, 1975

Daniel R. Coffman, Jr., Referee
Post Office Box 40089
Jacksonville, Florida 32203

(904) 389-5161

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IN THE SUPREME COURT OF FLORIDA

BEFORE DANIEL R. COFFMAN, JR., REFEREE

THE FLORIDA BAR,

Complainant,

v. CONFIDENTIAL

WILLIAM B. DAWSON, III,

Respondent.

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Before the Referee is a Complaint filed by The Florida Bar on October 13, 1972, which Complaint originally alleged six counts of professional misconduct against William B. Dawson, III, Respondent, a member of The Florida Bar. Respondent Dawson will hereinafter be referred to as "Dawson".

The Florida Bar has been represented by S. Thompson Tygart, Jr., Esquire, and James T. Terrell, Esquire, both members of The Florida Bar, practicing in Jacksonville, Florida. Dawson has been represented by Edward M. Booth, Esquire, and William A. Hallowes, Esquire, both members of The Florida Bar, practicing in Jacksonville, Florida.

This proceeding has been conducted pursuant to Article XI (Rules of Discipline) of the Integration Rule of The Florida Bar. Hearings were held on the dates indicated on the attached Summary of Proceedings Chart. Such Chart and the Pleadings, Notices, Motions, Orders, Transcripts and Exhibits, all of which are forwarded to The Florida Bar with this Report, constitute the record in this case.

II. FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH DAWSON IS CHARGED

After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

AS TO COUNT I

On May 20, 1974, counsel for The Florida Bar voluntarily dismissed Count I of the Complaint. The Referee will rec-

ommend approval of said dismissal.

AS TO COUNT II

(a) Count II, subparagraph 2 of the Complaint alleges the following:

> "From the period beginning on or about January 1, 1969, through February 28, 1971, the accused attorney, William B. Dawson, III, together with Dr. Archie T. Frazier, participated in a fraudulent scheme whereby certain medical bills were submitted to the accused attorney by said Dr. Archie T. Frazier for medical services allegedly rendered on behalf of clients of accused attorney, William B. Dawson, III, and thereupon submitted by the accused attorney to various liability insurance carriers in connection with settlements of various liability claims. Upon settlement of said claims the various amounts, representing the amount of the medical bills, were deducted from the proceeds payable to the accused attorney's clients, but said amounts were not remitted to the said Dr. Archie T. Frazier, as had been represented to the various clients."

Since The Florida Bar failed to introduce any evidence of participation by Dawson in a fraudulent scheme, as alleged above, the Referee will recommend that Dawson be found not guilty of Count II, subparagraph 2.

(b) Count II, subparagraph 3 of the Complaint alleges the following:

> "There was, in effect, an agreement between Dr. Archie T. Frazier and the accused attorney, William B. Dawson, III, whereby Dr. Frazier received certain varying amounts of regular weekly compensation unrelated to

the medical services rendered by him to any particular client of the accused attorney, William B. Dawson, III."

The Florida Bar attempted to support the above allegations of misconduct by producing, as its witness, Archie T. Frazier, M.D. The testimony of Dr. Frazier shows that Dawson represented the former in divorce proceedings in 1965 - 1966 and again represented Dr. Frazier in January, 1970, in a Florida State Board of Examiners "incident" (Tr. 132). Dr. Frazier assisted Dawson in the period 1969-1971 by treating medically clients of Dawson, which clients had been involved in accidents (Tr. 133). Dr. Frazier estimated that he was treating or seeing seven to ten clients of Dawson each month, or approximately 100 per year (Tr. 134). It appears from the testimony of Dr. Frazier that there was an unusual agreement between Dr. Frazier and Dawson whereby the former received, sometime in person, from Dawson checks in the amount of $250.00 every other week and sometimes every third week (Tr. 140). Dr. Frazier testified that there were times when he would go by Dawson's office and "get an amount of two hundred and fifty dollars by the week in account of some of the cases that were being settled" (Tr. 140). He also testified that some of the checks were in amounts other than $250.00 (Tr. 140). Dr. Frazier admitted that, generally, the $250.00 checks received from Dawson were not geared to any particular or specific medical bill that Dr. Frazier had rendered to Dawson (Tr. 140-141). When asked to explain this unusual arrangement, Dr. Frazier testified: "I was trying to adjust my cash flow. And as we would have an accounting or an adjustment of the cases settled, these amounts would be applied to that." (Tr. 141). To further add to the unusual arrangement, it appears that in some cases, Dawson would telephone Dr. Frazier and ask the latter to reduce the medical bill submitted to Dawson, on the ground that Dawson "didn't recover but so much from

the case" (Tr. 142). Dr. Frazier admitted that he cut his bill sometimes 33 1/3% or even 50% on every occasion that Dawson called about a reduction. Dawson called to request a reduction in the Doctor's bill on more than just a few occasions (Tr. 142-143).

It is not clear from the record whether or not the above arrangement to pay Dr. Frazier was at Dawson's request or Dr. Frazier's request. Dr. Frazier testified that he was trying to adjust his cash flow for purposes of income taxes and in order to insure that he (Frazier) had sufficient monies on hand to pay his taxes (Tr. 141, 144). No evidence was presented to the Referee to explain why Dawson felt the need to help Dr. Frazier with his alleged cash flow problem. Although the above arrangement between Dawson and Dr. Frazier, concerning monies owed to Dr. Frazier for treating Dawson's clients, seems most unusual, and even bordering on questionable monetary advancements for Dawson's clients, such arrangement, from this record, was not for "regular weekly compensation unrelated to the medical services rendered" by Dr. Frazier to clients of Dawson (See Count II, subparagraph 3). On the contrary, Dr. Frazier testified that all of the monies paid to him by Dawson's office were related to medical services that Dr. Frazier had rendered for Dawson's clients (Tr. 144 - 147). Therefore, the only witness produced by The Florida Bar to support the allegations raised in Count II, subparagraph 3, clearly testified that monies received from Dawson were related to medical services rendered to Dawson's clients. For this reason, the Referee will recommend that Dawson be found not guilty as to Count II, subparagraph 3.

AS TO COUNT III

Count III of the Complaint alleges the following:

> "From on or about January 1, 1969, up to and including the present time, the accused attorney has customarily and routinely made monetary advancements to his clients for purposes other than expenses of litigation."

In support of the above allegations concerning improper monetary advancements to Dawson's clients, The Florida Bar produced three witnesses: Lucius Henry Pryor, Teresa Jean Whatley, and Joan Loraine Clark.

Mr. Pryor testified that, after being involved in an automobile accident on April 23, 1970, he retained Dawson to represent him. Seven to ten days after the automobile accident, in Dawson's office, Dawson asked Mr. Pryor if he (Pryor) needed any money. Mr. Pryor answered in the affirmative, whereupon Dawson gave Mr. Pryor $100.00 (Tr. 36, 37 - 38). Dawson instructed a secretary in Dawson's office to make out a $100.00 check, which was given to Mr. Pryor (Tr. 39). Mr. Pryor testified that the $100.00 was not requested by him. Mr. Pryor further testified that Dawson gave him one additional check for $24.00 "to give to the Doctor" (Tr. 39). Mr. Pryor's case subsequently went to trial, but Mr. Pryor lost his case before a jury. Mr. Pryor testified that he has never given Dawson the $100.00 back, Dawson has never asked Mr. Pryor to give it back, Dawson has never sued Mr. Pryor for the return of the $100.00, nor has Dawson ever written Mr. Pryor concerning repayment of the $100.00. The uncontradicted testimony on this subject shows that Mr. Pryor used the $100.00 to purchase two automobile tires and that he had no conversation with Dawson about the $100.00 advancement subsequent to receipt of the $100.00 (Tr. 40 - 41). On cross

examination, Mr. Pryor was questioned about Dawson asking him if he (Pryor) needed any money. On cross examination, Mr. Pryor stated that Dawson asked him "what did I [Pryor] need." (Tr. 44). Mr. Pryor stated that he could not remember specifically the conversation, since it had been over four and a half years ago (Tr. 44). Mr. Pryor recalled that the second check from Dawson, in the amount of $24.00 went to Dr. Thomas Edwards, an ophthamologist. (sic) (Tr. 45). Mr. Pryor also paid Dr. Edwards $15.00 out of his own funds, in addition to the $24.00 check Dawson gave Mr. Pryor (Tr. 54). There is no evidence that Mr. Pryor repaid Dawson the $24.00 (Tr. 65).

Mrs. Whatley was injured in an automobile accident on December 24, 1969, injuring her back and neck (Tr. 66 - 67). Within a week's time Mrs. Whatley retained Dawson to represent her in her claim for the injuries received in the December 24, 1969 automobile accident. (Tr. 67 - 68). About a month after retaining Dawson to represent her, Mrs. Whatley started receiving a "salary replacement" check each week in the amount of approximately $60.00 or $65.00 from Dawson (Tr. 69 - 70). Dawson would give such checks to Mrs. Whatley every Monday at Dawson's office, which advancements continued for about two months (Tr. 70). Mrs. Whatley testified that she did not always see Dawson when she came to Dawson's office to pick up her regular weekly check, since Dawson's secretary would always give the check to her (Tr. 70). Mrs. Whatley's case was eventually tried but lost. Mrs. Whatley testified that the subject of the salary replacement checks never came up after the case was lost, even though Mrs. Whatley had a conversation with Dawson concerning Dawson's plans about the case as a result of losing (Tr. 77 - 78). Mrs. Whatley has never repaid Dawson the money advanced to her and Dawson has never asked her to repay such

money. Dawson has never had any correspondence with Mrs. Whatley concerning the repayment of the money, nor has Dawson ever sued her for repayment of the money (Tr. 79-80). Mrs. Whatley used the money from the Dawson checks as she would money from her regular pay check at S & S Cafeteria had she been able to continue working. Mrs. Whatley used the money she received from the Dawson checks for food and groceries, telephone bills, and to help her mother and father, since her father had to go out on strike (Tr. 80, 83). Sometime before the instant hearing before the Referee, Mrs. Whatley telephoned Dawson's office, since his name was on her subpoena; Mrs. Whatley questioned Dawson as to why she was being subpoenaed, and Dawson told her it concerned the money that he had "loaned" her during the time that she was his client. Mrs. Whatley in turn told Dawson that he didn't loan her the money because it was a salary replacement; they exchanged some words about it (Tr. 81). Mrs. Whatley testified on direct examination that Dawson did tell her in 1969-1970 that the salary replacement money would be reimbursed to Dawson when he won the law suit (Tr. 82). To Mrs. Whatley's knowledge, Dawson has never been reimbursed for any of the money that he advanced to her (Tr. 82). On cross examination, Mrs. Whatley stated that Dawson's advancing her the salary replacement checks had nothing to do with her going to Mr. Dawson in the first place, nor did such advancements have anything to do with Dawson continuing to represent her in her case (Tr. 85). At some point in the attorney-client relationship, Dawson's secretary, "Becky", told Mrs. Whatley that her check had been cut off. Mrs. Whatley then saw Dawson who said he couldn't advance her any more money (Tr. 94).

Mrs. Joan Loraine Clark worked for Dawson as a legal secretary from August, 1969 to March, 1971. Mrs. Clark testified

that Dawson was giving monetary advancements, on a daily basis, to clients. She testified that each Friday "over a hundred, a couple of hundred" clients would come to Dawson's office to receive their advancement checks, the amounts of which would be determined by Dawson (Tr. 184-185, 189-190). There would be times when Dawson would say to either Mrs. Clark, of (sic) secretaries close to Mrs. Clark, not to give a certain person an advance (Tr. 192). Mrs. Clark explained that the system for repayment for advancements was as follows: "On a closing statement when a case was closed, on a closing statement advances would be pulled and they would be, you know, deducted from the part of the settlement." (Tr. 194). In the event a case was lost, advances were not repaid by the client, as far as Mrs. Clark knows (Tr. 195). On approximately five occasions, Mrs. Clark heard Dawson tell clients that this will be money for the client while they are off work or while they are going to a doctor (Tr. 197 - 198).

On cross examination, Mrs. Clark testified that the word "advance" was written on the bottom of checks prepared by Mrs. Clark. Mrs. Clark further testified that at times she was told to write a check to an existing client who had brought in a new case (Tr. 217 - 218). On redirect examination, Mrs. Clark recalled one specific occasion when she heard Dawson tell a client that he (Dawson) would give the client monetary advancements while off work in order to go see a doctor. (Tr. 228 - 229). Mrs. Clark explained that an "advancement check" in the Dawson firm was a check made out to a client after the client had an accident and before the case was settled (Tr. 232). When a case was lost, Mrs. Clark recalled that in one particular case within her part of the alphabet (R - Z), she was instructed to "pull the advances and to file the advancements in the file". She then wrote "lost" on the outside of the file and placed it in the closed file (Tr. 232 - 233).

Based on all the above, I will recommend that Dawson be found guilty of Count III.

AS TO COUNT IV

Count IV of the Complaint alleges the following:

> "That on or about March 31, 1972, the accused attorney, William B. Dawson, III, did unlawfully and feloniously receive and aid in the concealment thereof, certain stolen property, to-wit: two IBM Electric typewriters and one Remington Electric typewriter, both (sic) the property of Virginia Paper Company, a corporation; and one SCM Marchant adding machine, the property of Mercedes Benz, Inc., a corporation. The accused attorney, William B. Dawson, III, knew that said property was stolen."

At some time prior to February, 1972, Howard McGee was a client of Dawson in a civil case (Tr. 119 - 120). In February or March, 1972, McGee took a typewriter, which he had acquired by theft, to Dawson's office, where Dawson examined the typewriter to see if it was working properly. After examining the typewriter, Dawson and McGee discussed the purchase price, which McGee testified to as follows: "I'm not sure, but I believe it was $75.00 dollars." (Tr. 105 - 107). After this first transaction with Dawson and before leaving Dawson's office, McGee asked Dawson if he (Dawson) needed any more typewriters; Dawson replied in the affirmative (Tr. 107).

McGee then stole another typewriter, but McGee is not sure when. He testified that it could have been anywhere from one day to a week after the first typewriter transaction with Dawson, but McGee does recall that this second trans-

action also took place at Dawson's office (Tr. 107-108). McGee testified that Dawson was present, in his office, at the first two transactions involving stolen typewriters. McGee left the second typewriter with Dawson at his office (Tr. 111-112).

On or about March 31, 1972, McGee stole three typewriters from the Virginia Paper Company, Jacksonville, Florida. Two of these typewriters were fairly new IBM Selectric typewriters with interchangeable, spherical typing elements, and the third typewriter was an older Remington typewriter (Tr. 116, 238 - 239).[1/] The two IBM typewriters were worth approximately $500.00 each, and the Remington was worth approximately $200.00 (Tr. 247-248).

The same night McGee stole the three typewriters from the Virginia Paper Company, he took them to Dawson's house "out towards the beach", arriving there at approximately

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1/ At the hearing, Respondent has again raised the doctrine of fruit-of-the poisonous tree, alleging that this federal exclusionary rule, binding on all federal and state criminal courts, precludes the Referee from making a valid finding of any misconduct by Dawson relative to Count IV, *supra*. Apparently, Respondent's theory is that under the fruit-of-the-poisonous tree doctrine, but for an unlawful search and seizure, the instant Bar disciplinary proceeding relative to Count IV would never have commenced. In the first place, there is no persuasive evidence in this record, including Answers to Interrogatories, that Count IV had its genesis in evidence or information acquired as a result of such a search and seizure, or "poisonous tree". Secondly, it is the Referee's opinion that the fruit-of-the poisonous-tree doctrine is one applicable to criminal cases, and does not obtain (sic) in Article XI Bar disciplinary proceedings, which are more nearly in the nature of quasi-judicial administrative proceedings.

10:30 - 11:00 p.m., and left the three stolen typewriters at Dawson's house (Tr. 112, 116, 121). At approximately 9:00 a.m., the next day, McGee again appeared at Dawson's office (Tr. 108, 116 - 117, 121). Dawson told McGee that he (Dawson) didn't need that many typewriters. Dawson first offered McGee $25.00 to pick up the typewriters McGee had recently left at Dawson's home, but Dawson agreed to purchase two of the typewriters for a total price of $150.00 (Tr. 116 - 117, 121). Dawson and McGee agreed that McGee would go back to Dawson's home to pick up the third typewriter, but McGee never went back to pick it up (Tr. 117). McGee did not tell Dawson that the typewriters were stolen property (Tr. 119 - 120).

On the question of guilty knowledge, the Referee finds that Dawson either knew or should have known that the Virginia Paper Company typewriters he received from McGee were stolen goods, due to the presence of several circumstances, which should have put a person of ordinary intelligence and caution on notice to inquire. These suspicious circumstances were as follows:

(a) McGee was selling typewriters far below their fair market value (Tr. 117, 247 - 248);

(b) Three recently stolen typewriters were, apparently without prior arrangement, personally delivered to Dawson's residence between 10:30 - 11:00 p.m., by McGee, the thief, on the same night McGee stole the typewriters from Virginia Paper Company (Tr. 112, 116, 121);

(c) Dawson offered McGee $25.00 to pick up the Virginia Paper Company typewriters from Dawson's home (Tr. 117);

(d) McGee never bothered to pick up the one typewriter for which Dawson never paid McGee (Tr. 117);

(e) The Virginia Paper Company typewriter transaction was the third occasion, within an approximately two-month period, that McGee had sold a typewriter or typewriters to Dawson;

(f) McGee pursued Dawson to receive payment for the stolen Virginia Paper Company typewriters within less than 12 hours after personal delivery to Dawson's home.

In State v. Graham, 238 So.2d 618 (Fla. 1970), the Supreme Court of Florida held that proof of possession of recently stolen property coupled with such other circumstances as unusual manner of acquisition, purchase of stolen goods at less than value, possession of other stolen property, or other evidence or circumstances which would put a person of ordinary intelligence and caution on notice to inquire will support a criminal conviction for receiving stolen property.

In the instant Bar disciplinary proceeding, I will recommend a finding that Dawson both purchased and received stolen goods from Howard McGee under circumstances which should have put a person of ordinary intelligence and caution on notice to inquire. Having so recommended, I am compelled to add that Dawson, as an attorney who had practiced before the Bar for over 20 years should be held to an even higher standard than the reasonably prudent man standard.

AS TO COUNT V

On October 22, 1974, at the hearing on the merits, counsel

for The Florida Bar voluntarily dismissed Count V of the Complaint (Tr. 318). The Referee will recommend approval of said dismissal.

AS TO COUNT VI

On October 22, 1974, at the hearing on the merits, counsel for The Florida Bar voluntarily dismissed Count VI of the Complaint (Tr. 318). The Referee will recommend approval of said dismissal.

III. RECOMMENDATIONS AS TO WHETHER OR NOT DAWSON SHOULD BE FOUND GUILTY

As to each surviving Count of the Complaint, I make the following recommendations as to guilt or innocence:

AS TO COUNT II, SUBPARAGRAPHS 2 AND 3

I recommend that Dawson be found not guilty.

AS TO COUNT III

I recommend that the Respondent be found guilty of violating his Oath of Admission, the Integration Rule of The Florida Bar, and Canon 10 (Acquiring Interest in Litigation) of the Old Canons of Professional Ethics.[2]/ and Rules 27 and/or 32 of the Additional Rules Governing the Conduct of

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2/ As adopted by The Florida Supreme Court on December 6, 1955, and as further amended November 17, 1958, March 25, 1964, and May 11, 1966.

Attorneys in Florida[3]/, to-wit:

> From on or about August 1, 1969 to March 1, 1971, Dawson improperly advanced financial assistance to his clients for purposes other than expenses of litigation.[5]/

AS TO COUNT IV

I recommend that Dawson be found guilty of violating his Oath of Admission, the Integration Rule of The Florida Bar, and Canon 1 of the Code of Professional Responsibility[4]/, specifically, Disciplinary Rule 1-102, by having committed the following act:

> On or about March 31, 1972, Dawson purchased and/or received three stolen typewriters, to-wit: two IBM electric typewriters and one Remington electric typewriter, either knowing said typewriters were stolen or
>
> under circumstances which would or should have put a person (a fortiori, an experienced lawyer) of ordinary

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3/ As adopted by the Supreme Court of Florida on January 27, 1941, and December 6, 1955.

5/ The evidence to sustain a Bar disciplinary decision against an accused attorney must be clear and convincing. This is an intermediate standard between the preponderance of the evidence standard used in most civil cases and the maximum standard applied in criminal cases, requiring proof of guilt beyond and to the exclusion of every reasonable doubt. In the instant case, the evidence supporting Counts III and IV is clear and convincing.

4/ As adopted by the Supreme Court of Florida on June 3, 1970.

intelligence and caution on notice to inquire.[5]/

IV. RECOMMENDATIONS AS TO DISCIPLINARY MEASURES TO BE APPLIED

(a) I recommend as to Count III that Respondent be disbarred from the practice of law in Florida.

(b) I recommend as to Count IV that Respondent be disbarred from the practice of law in Florida.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD

After findings of guilty and prior to recommending discipline to be recommended pursuant to Rule 11.06(9)(a)(4), I considered the following personal history and prior disciplinary record of Respondent Dawson, to-wit:

A: Age - 51 years.
Date admitted to The Florida Bar - 1950.

B: Prior disciplinary convictions and disciplinary measures imposed: see State v. Dawson, 111 So.2d 427 (Fla. 1959) (Respondent Dawson was suspended from the practice of law for a period of 18 months and

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5/ The evidence to sustain a Bar disciplinary decision against an accused attorney must be clear and convincing. This is an intermediate standard between the preponderance of the evidence standard used in most civil cases and the maximum standard applied in criminal cases, requiring proof of guilt beyond and to the exclusion of every reasonable doubt. In the instant case, the evidence supporting Counts III and IV is clear and convincing.

ordered to pay the cost of the proceeding in the amount of $871.03; professional misconduct found included (1) soliciting professional employment through an intermediary and (2) purchasing an interest in subject matter of litigation).

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

It is recommended that all costs incurred at the Grievance Committee level (as reported by Bar counsel) through administrative costs incurred at the Referee level and all expenses be charged to the Respondent Dawson.

Dated this 10th day of February, 1975.

/s/ Daniel R. Coffman, Jr., Referee

Daniel R. Coffman, Jr., Referee

APPENDIX IV

STATE of Florida, Appellant,

v.

William B. DAWSON, III, Appellee.

No. S-230.

District Court of Appeal of Florida,

First District.

April 5, 1973.

Rehearing Denied May 3, 1973.

Interlocutory appeal from Criminal Court of Record for Duval County, Victor O. Wehle, J. The District Court of Appeal held that search warrant was invalid for failure to contain command that person executing warrant bring property found and person in possession thereof before magistrate issuing warrant or some other court having jurisdiction of offense.

Affirmed.

Searches and Seizures — 3.4

Search warrant was invalid for failure to contain command that person executing warrant bring property found and person in possession thereof before magistrate issuing warrant or some other court having jurisdiction of offense. F.S.A. § 933.07.

Robert L. Shevin, Atty. Gen., Michael M. Corin, Asst. Atty. Gen., for appellant.

William A. Hallowes, III, Edward M. Booth, Jacksonville, for appellee.

PER CURIAM.

Appellant has failed to demonstrate that the order reviewed herein is inconsistent or in conflict with the Florida Supreme Court's decision in Jackson v. State, 87 Fla. 262, 99 So. 548 (1924), wherein the court in an opinion written by the late Justice Terrell stated:

> 'When searches and seizures are made pursuant to the command of a search warrant, both the search warrant and the prerequisite oath or affirmation required for it must conform strictly to the constitutional and statutory provisions authorizing their issue. This is true, because there is no process known to the law, the execution of which is more distressing to the citizen or that actuates such intense feeling of resentment on account of its humiliating and degrading consequences. As thus enunciated the law is in line with, and is no doubt the child of our Anglo-Saxon spirit of liberty which holds every man's house or dwelling as his castle, and which declares that it must not be invaded or subjected to an uninvited search, except by a duly qualified officer, and then only in pursuance of a valid writ commanding it. White v. Wagar, 185 Ill. 195, 57 N.E. 26, 50 L.R.A. 60."

The court's decision in Jackson, supra, seems consistent with the rule generally prevailing throughout the country, at least since 1900, as set forth in White v. Wagar cited with approval by the Florida Supreme Court in the Jackson case. In the White case, the Illinois Supreme Court, considering a case in which the search warrant omitted the statutory command that the property found pursuant to a search warrant and the person in possession thereof be brought before the magistrate, stated:

> "There is another fatal defect in the proceeding. The search warrant issued by the justice directed the officer to diligently search for the goods and chattels, and, if the same or any part thereof be found, to bring the same before the justice of the peace; but the warrant nowhere contains a direction that he shall also bring with him the person in whose possession the goods are found. . . ."

Citing from Cooley, Constitutional Limitations (6th Ed.) 369, the court further stated:

> "The warrant must also command that the goods or other articles to be searched for, if found, together with the party in whose custody they are found, be brought before the magistrate, to the end that, upon further examination into the facts, the goods, and the party in whose custody they were, may be disposed of according to law."

The Illinois Supreme Court's decision in the White case has been cited with approval by the highest courts in at least eight of our sister states and with approval by the Supreme Court of Florida in at least three cases, including Jackson, supra.

It is clear then that the warrant authorizing the search of appellee's premises in the case at bar was defective on its face by failing to contain the command that the person executing the warrant bring the property found and the person in possession thereof before the magistrate issuing the warrant or some other court having jurisdiction of the offense as prescribed by Section 933.07, Florida Statutes, F.S.A. See also Searches, Seizures and Immunities by Varon, Vol. 1, page 359, describing the requirement in the following manner:

> "All executing officers must be commanded to bring

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> before the magistrate or issuing authority, both the property described and the person in possession thereof. Any warrant which fails in this direction or command is void. This fundamental rule of law has been held to prevail, even where the person in possession voluntarily appears before the magistrate."

In view of the fundamental character of the requirement that the command to bring forth be included in the warrant, we can hardly say that the trial judge committed error in holding that the search warrants in this case were invalid. Accordingly, the order reviewed herein is

Affirmed.

SPECTOR, C. J., and WIGGINTON and CARROLL, DONALD K., J.J., concur.

APPENDIX V

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

-vs- CASE NO. 46,948

WILLIAM B. DAWSON, III,

Respondent.

PETITION FOR REHEARING

Petitioning for rehearing of this cause and for a reversal of this Court's decision of July 24, 1975, adopting the report of the referee and recommending disbarment of Respondent upon a finding of guilt on Counts III and IV of The Florida Bar's Complaint, the Respondent respectfully shows:

I.

In regard to the finding of guilt and the disbarment of Respondent under Count III of the Bar's Complaint, wherein he was charged with making monetary advancements to his clients for purposes unrelated to the conduct of their litigation, this Court's finding that the charge was proven by clear and convincing evidence appears contrary to the testimony of the witnesses offered by the Bar in support thereof as to the purpose for which advancements were made.

This Honorable Court inadvertently overlooked and failed to give heed to its two prior pronouncements in the cases of State v. Dawson (Fla. 1959), 111 So.2d 427, and State v. Rhubottom (Fla. 1961), 132 So.2d 395. In these cases, this

Court held that a lawyer is not precluded from advancing sums incidental to the conduct of the client's business, providing that promises of such advancements were not conditions of obtaining the professional employment in the first instance, or preserving that employment once obtained. Clearly and without contradiction, each witness called by the Bar herein definitely testified that the advances received from Mr. Dawson was not a condition to his employment, nor was it a condition to the continuation thereof after he undertook their representation.

This Court, in its judgment herein, apparently relied strongly upon the testimony of Miss Joan Clark, a former secretary in Mr. Dawson's office, when the Court said:

> "Respondent's secretary testified to a 'Friday payroll' for a significant number of clients."

In reaching this judgment, the Court overlooked and failed to give due consideration to the fact that her testimony was based upon vague and unsupported conclusions, notwithstanding the fact that the Bar had the responsibility of proving by clear and convincing evidence that Respondent customarily and routinely made monetary advancements to his clients unrelated to the cost of litigation. The substance of Miss Clark's testimony as to the purpose for which advancements were made is found in her answers to the following questions:

"Q Now, when you were told to write a check for advance, generally that's all you were told, just write a check to so and so and note it as an advance?

A Certainly.

Q You would have no way of knowing what it was for; whether it was for medical bills, to buy a brace,

to pay a doctor, to pay for transportation in conjunction with the litigation or anything else; would you?

A Correct.

Q I think you said you didn't handle any of the bookkeeping for the firm?

A No, sir.

Q So, you would have no way of knowing whether a client repaid – excuse me. Did you handle the banking?

A No, sir.

Q Did you handle the deposits for the bank?

A No, sir.

Q You would have no way of knowing then whether a client actually reimbursed Mr. Dawson for any monies advanced; whatever those purposes might have been, except maybe in a rare case where you personally knew that maybe a client did not repay the money?

A Well, at the time of the settlement of the case, I would see advances repaid.

Q No. I'm talking about where a case may have been lost. Inasmuch as you didn't handle the banking or bookkeeping or anything else, you would not know if that client ever reimbursed Mr. Dawson?

A Correct."

[See Pages 32 and 33 of Mr. Dawson's Main Brief]

Moreover, this Court's footnote appearing at the bottom of Page 2 of its opinion herein which reads:

> "Respondent was previously disciplined for similar misconduct involving money advances to clients. State v. Dawson, 111 So.2d 427(Fla. 1959).

is not, in fact, correct. The factual setting of the 1959 case is not similar to that shown by the record in the case at bar. The proof in the 1959 case showed that advancements made by Mr. Dawson at that time were inducements to obtain the employment and he was condemned in that case for solicitation of legal business. In the case at bar, each witness refuted and denied any solicitation on Mr. Dawson's part.

Therefore, the Court's statement that Mr. Dawson should be disbarred because of his complete inability to comprehend the responsibility of an attorney, predicated upon his earlier discipline, is misplaced, the Court having failed to consider the dissimilarity in the factual setting and proof of the 1959 case and the present case. Moreover, this Court failed to take into consideration the fact that Mr. Dawson should not be condemned for relying upon the statements of Mr. Justice Thornal in the 1959 Dawson case as to when it was proper for him to make a monetary advancement to a client.

II.

As to the finding of guilt and disbarment under Count IV of the Bar's Complaint charging Mr. Dawson with knowingly receiving stolen property, we agree with this Court's statement that such finding was based, in part, on circumstantial evidence. In reaching its conclusion, however, this Court failed to take into consideration and apply the well established rule relating to the sufficiency of circumstantial evidence to warrant a finding of guilt, namely:

1. That the circumstances must not only be consistent with guilt, but inconsistent with any reasonable hypothesis of innocence.

2. That if the circumstances are susceptible of two reasonable constructions, one indicating guilt and the other innocence, the conclusion indicating innocence must be accepted.

This Court has repeatedly held that the evidence to warrant a finding of guilt in disciplinary proceedings must be clear and convincing. This should apply with equal force to circumstantial as well as direct evidence.

In conclusion, we respectfully submit that for the foregoing reasons, rehearing should be granted herein and the Order disbarring Mr. Dawson from the practice of law in Florida should be set aside. Alternatively, the severity of the penalty imposed upon him should be lessened.

Respectfully submitted,

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Jacksonville, Florida 32207
ATTORNEYS FOR RESPONDENT

BY: /s/ Edward M. Booth

Edward M. Booth

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing has been furnished to S. Thompson Tygart, Jr., Esquire, and James T. Terrell, Esquire, c/o S. Thompson Tygart, Jr., 609 Barnett Regency Tower, Jacksonville, Florida 32211, Attorneys for Complainant, and to Norman A. Faulkner, Esquire, Staff Counsel, The Florida Bar, Tallahassee, Florida 32304, by mail delivery this 7th day of August, 1975.

/s/ Edward M. Booth

APPENDIX VI

IN THE SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1975

THURSDAY, SEPTEMBER 11, 1975

CASE NO. 46,948

THE FLORIDA BAR,

Complainant,

vs.

WILLIAM B. DAWSON, III,

Respondent.

On consideration of the Petition for Rehearing filed by respondent and response thereto,

IT IS ORDERED that said petition is denied; and it is further

ORDERED that upon consideration of Motion to Approve Cost Statement filed by The Florida Bar, attorneys fees for Bar Counsel is denied, and $1,383.42 is hereby allowed The Florida Bar for costs.

ADKINS, C.J., ROBERTS, BOYD, OVERTON AND ENGLAND, JJ., CONCUR

A True Copy
TEST: (sic)
Sid J. White
Clerk Supreme Court.
By: /s/ Kay D. Yent
Deputy Clerk

CC: Hon. Edward M. Booth
Hon. William A. Hallowes
Hon. S. Thompson Tygart, Jr.
Hon. James T. Terrell, Jr.
Hon. David G. McGunegle

APPENDIX VII

ARTICLE V

Provisions Concerning Prosecution, Trial and Punishment— Private Property Not to Be Taken for Public Use Without Compensation.

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI

Right to Speedy Trial, Witnesses, Etc.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE XIV

Citizenship Rights Not to Be Abridged.

The Fourteenth Amendment, adopted by the thirty-ninth Congress, held in 1866, was ratified by more than three-fourths of the States, and made a part of the Constitution, July 28, 1868.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX VIII

RULE 11.02: BREACHES OF DISCIPLINE

The following principles, among others expressly adopted by this court, shall govern the conduct of members of The Florida Bar in their capacity as attorneys and shall govern all proceedings for discipline of such members: a license to practice law confers no vested right to the holder thereof, but is a conditional privilege revokable for cause. The primary purpose of discipline of attorneys is the protection of the public, and the administration of justice, as well as protection of the legal profession through the discipline of members of the Bar. It is the responsibility of this court to purge the Bar of those unworthy to practice law in this state and it is the obligation of The Florida Bar and the individual members thereof to give unlimited cooperation and assistance to this court in the discharge of this responsibility. The Florida Bar is expressly delegated the authority, power and duty to maintain high ethical standards and to take such proceedings as authorized in these rules to insure such standards in the Bar of Florida.

(1) *Oath.* Violation of the oath taken by an attorney to support the Constitutions of the United States and the State of Florida is ground for disciplinary action. Membership in, alliance with, or support of the Communist Party of any organization, group or party advocating or dedicated to the overthrow of the government by violence or by any means in violation of the Constitution of the United States or constitution of this state shall be a violation of the oath.

(2) *Code of ethics.* Violation of the Code of Professional Responsibility as adopted by Article X of the Integration Rule is a cause for discipline.

(3) *Moral conduct.*

(a) *Standards.* The standards of professional conduct to be observed by members of the Bar are not limited to the observance of rules and avoidance of prohibitive acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, constitutes a cause for discipline.

(b) *Crime.* If the alleged misconduct constitutes a felony or misdemeanor, The Florida Bar may initiate disciplinary action whether or not – the accused attorney has been tried, acquitted or convicted in a court for the alleged criminal offense; however, the Board of Governors may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against an accused attorney if the Board believes that prosecution thereof might tend to prejudice the accused attorney in his defense or the state in the prosecution of the criminal proceedings.

(4) *Trust funds and fees.* Money or other property entrusted to an attorney for a specific purpose, including advances for costs and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney fees, and a refusal to account for and deliver over such property and money upon demand shall be deemed a conversion. This is not to preclude

the retention of money or other property upon which the lawyer has a valid lien for his services or to preclude the payment of agreed fees from the proceeds of transactions or collections. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate or the demand is fraudulent.

In a controversy alleging a clearly excessive, extortionate or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

(a) *Trust accounts required.* Any bank account maintained by a member of The Florida Bar to comply with Disciplinary Rule 9–102 of the Code of Professional Responsibility is and shall be clearly labeled and designated as a trust account. Any safe deposit box used in connection with the practice of law in Florida maintained by a member of The Florida Bar to comply with said Disciplinary Rule 9–102 shall be located in this state (unless the client otherwise consents in writing) and the member of The Florida Bar shall advise any institution in which such deposit box is located that the contents of the same may include property of clients.

(b) *Trust accounts as official records.* A member of The Florida Bar shall preserve or cause to be preserved the records of all bank accounts or other records petaining to the funds or property of a client maintained by him in compliance

with Disciplinary Rule 9–102 for a period of not less than six years subsequent to the last transaction pertaining to the same or subsequent to the final conclusion of the representation of a client relative to such funds or property, whichever shall last occur. Such records shall include checkbooks, cancelled checks, check stubs, vouchers, ledgers and journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds, or similar equivalent records clearly and expressly reflecting the date, amount, source and reason for all receipts, withdrawals, deliveries and disbursements of all the funds or property of a client. All of such records shall be deemed to be kept pursuant to the Integration Rule of The Florida Bar, as a specific prerequisite to the right to receive, deliver and disburse funds or property of a client, and to have a public aspect relating to the protection of clients and to fitness of a member of The Florida Bar to practice law. In any instance of an alleged violation by a member of The Florida Bar of this Rule 11.02(4) or of any Disciplinary Rule of the Code of Professional Responsibility such records insofar as they may relate in any way to the transaction, occurrence or client in question shall be produced by the member of The Florida Bar for inspection, audit and copying by a designated representative of The Florida Bar upon the direction of this court or any judge of this state acting under Rule 11.14 or of a grievance committee or of the Board of Governors if acting pursuant to Rule 11.05(2) or of a referee. Such records or copies thereof shall be admissible in evidence in any proceeding under this rule; provided notice of such intended use shall be given to any client involved, if practicable, unless such client is already aware of such intended use, and upon good cause shown by such client the admission of the same shall be under such conditions as shall be reasonably calculated thereafter to protect the confidences of such

client in the event that the proceedings otherwise become public records pursuant to Rule 11.12. Permissible means of protection shall not prejudice the respondent or accused attorney, and may include but are not limited to excision, in camera production, retention in sealed envelopes, or similar devices. Failure to maintain such records or to produce them upon such direction shall constitute grounds for disciplinary action under the Integration Rule without regard to any other matter. The cost of any audit or investigation necessitated by such failure may be taxed against a respondent.

(5) *Solicitation.* The solicitation of professional employment by advertisement, runners, solicitors, investigators, or in any other manner shall constitute grounds for disciplinary action. Payment of compensation shall not be a necessary element of proof of solicitation.

(6) *Discipline by foreign jurisdiction.* A final adjudication by a court or other authorized disciplinary agency of another jurisdiction, state or federal, in a disciplinary proceeding that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule. In such cases the adjudication of misconduct shall be sufficient basis for the filing of a complaint by The Florida Bar and assignment for hearing before a referee without a finding of probable cause under these rules.

A member of The Florida Bar disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state or by a federal court shall within 30 days after the effective date of the disbarment or suspension file with this court a copy of the order or judgment effecting such disbarment or suspension.

APPENDIX IX

OATH OF ADMISSION*

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following oath of admission to the Bar, which they are sworn on admsision to obey and for the wilful violation to which disbarment may be had.

"I DO SOLEMNLY SWEAR:

"I will support the Constitution of the United States and the Constitution of the State of Florida.

"I will maintain the respect due to Courts of Justice and judicial officers;

"I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

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*The preliminary sentence and oath quoted above are taken from the rules adopted by the Florida Supreme Court on January 27, 1941. See 145 Fla. 797, 798 and 31 F.S.A. (1950 Ed.) 420.

"I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So Help Me God."

APPENDIX X

10. Acquiring Interest in Litigation.

The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.

APPENDIX XI

ADDITIONAL RULES GOVERNING THE CONDUCT OF ATTORNEYS IN FLORIDA

(As adopted by the Florida Supreme Court on January 27, 1941, and December 6, 1955*)

27. Be guilty of any deceit or wilful misconduct in his profession;

32. Any attorney who shall do or be guilty of any of the acts forbidden or prohibited by law or rules of court may be subject to disciplinary action by public or private reprimand, or by suspension from the practice of law, or by exclusion and disbarment therefrom.

APPENDIX XII

CANON 1

A Lawyer Should Assist in Maintaining the Integrity and Competence of the Legal Profession

CANON 5

A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client

APPENDIX XIII

ETHICAL CONSIDERATIONS

EC 5-8 A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his cause of action, but the ultimate liability for such costs and expenses must be that of the client.

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IN THE

United States Supreme Court

October Term, 1975

No. 75-498

WILLIAM B. DAWSON, III,
Petitioner,

v.

THE FLORIDA BAR,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

WILLIAM H. ADAMS, III
Post Office Box 4099
Jacksonville, Florida 32201
Attorney for The Florida Bar

IN THE

United States Supreme Court

October Term, 1975

No. 75-498

WILLIAM B. DAWSON, III,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Petitioner seeks the issuance of a writ of certiorari to review a decision of the Supreme Court of Florida disbarring him from the practice of law.

Jurisdiction

The petition for certiorari asserts that this Court has jurisdiction under 28 U.S.C., §1257(3), which gives the Court jurisdiction to review by writ of certiorari decisions rendered by the highest court of a state if "any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of . . . the United States."

Under this section, it is settled that the Court does not have jurisdiction unless the federal questions to be considered

were properly raised in the state proceedings. This prerequisite to jurisdiction is implicit in Rule 23(1)(f), which requires a petition for certiorari to specify the stage in the state court proceedings both in the court of first instance and in the appellate court, at which and the manner in which the federal questions sought to be reviewed were raised.

The petition for certiorari ignores this requirement, and for good reason. Except for the issue raised by Question 5, none of the issues embodied in the questions stated in the petition for certiorari were raised or considered in the proceedings below. Under the circumstances, it is respectfully submitted that the Court does not have jurisdiction to consider the first four questions stated in the petition.

Question Presented

Inasmuch as the Supreme Court does not have jurisdiction to review the first four questions raised in the petition for certiorari, the only question presented by the petition which the Court has jurisdiction to consider is whether petitioner was entitled to a jury trial in the disciplinary proceedings that resulted in his disbarment.

Argument

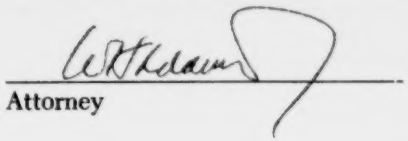
Petitioner has cited no authority to support his contentions that in a disciplinary proceeding an attorney has a constitutional right to a trial by jury. Indeed, the only authority he has cited is *Ex Parte Wall*, 107 U.S. 265 (1883) which is a direct holding to the contrary. Nor has petitioner come forward with any reasons why this decision should be overruled or why the existing practice of not using juries in disciplinary cases should be changed. In short, on this issue there is nothing in the petition which requires an answer. The issue is so lacking in merit that further argument would simply burden the Court.

Respectfully submitted,

WILLIAM H. ADAMS, III
Post Office Box 4099
Jacksonville, Florida
Attorney for The Florida Bar

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief in Opposition to Petition for Certiorari has been furnished to Gerald R. Hart, 333 East Bay Street, Jacksonville, Florida 32202, by United States Mail this 2 day of October, 1975.



Attorney